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IN THE

Supreme Court of the United States

OCTOBER TERM, 1959

No. 418

COMMUNICATIONS WORKERS OF AMERICA, AFL-CIO, and LOCAL UNION NO. 4372, COMMUNICATIONS WORKERS OF AMERICA, AFL-CIO

Petitioners

vs

NATIONAL LABOR RELATIONS BOARD,

Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

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vs

NATIONAL LABOR RELATIONS BOARD,

Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

The Communications Workers of America, AFL-CIO, and Local Union No. 4372, Communications Workers of America, AFL-CIO, pray that a writ of certiorari issue to review the decision and decree of the United States Court of Appeals for the Sixth Circuit, entered May 14, 1959, as to which Motion for Reconsideration and Rehearing was denied by that Court by Order entered June 26, 1959. The Decree enforced an order of the National Labor Relations Board with modification.

OPINIONS BELOW

The opinion of the court below (R. 16) is reported at 266 F. 2d 823. The Order denying the Motion for Reconsideration and Rehearing (R. 18) is reported at .....F. 8d..... The decision and order of the

Board (B.A. 78a) is not yet reported but will be reported as 120 NLRB No. 96.[1]

JURISDICTION

The opinion and decree of the Court of Appeals were entered on May 14, 1959. Petitioners' Motion for Reconsideration and Rehearing (R. 17) requesting further modification of the Board's order, or, in the alternative, clarification of the effect of the Court's decree, was denied on June 26, 1959. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1) and Section 10(e) of the National Labor Relations Act, as amended.

QUESTIONS PRESENTED

1. Is not a Labor Board Order too broad, which enjoins Respondents from restraining or coercing employees of the primary employer "or any other employer," when there is no pleading, allegation, evidence, or finding in the record that employees of any employer, other than the primary employer, were or could have been restrained by the conduct of the strikers?

2. Was it not error for the Court of Appeals to enforce a Labor Board Order which enjoins a parent national union and one of its 730 Local unions from restraining and coercing employees of a primary employer or "any other employer" where there was no pleading, allegation, evidence or finding in the record to support extending the scope of the order to employees of "any other employer"; and where the alleged justification of the scope of the order consisted only of compromise settlements, containing no admis-

[1]Reference to the printed "Appendix to Petitioner's Brief," which constituted the appendix record below and which contains the Board's decision and order and the Trial Examiner's Intermediate Report, is designated "B.A." The certified transcript of proceedings in the Court of Appeals is designated "R".

sion of guilt, in two other isolated cases; and where such compromise settlements were injected into the case for the first time in the brief of the Board's General Counsel filed with the Court of Appeals to support its petition for enforcement?

3. Is not a Labor Board Order, enforced by the Court of Appeals, which enjoins a national labor union, operating from coast-to-coast with collective bargaining agreements with some 100 different employers, and one of its 730 Locals from restraining or coercing employees of a primary employer "or any other employer" so broad in scope as to make the Court of Appeals, in possible future contempt proceedings, a court of first instance for the trial of other unrelated unfair labor practices in geographical areas outside of its jurisdiction?

4. Was it not error for the Court of Appeals to refuse to strike the words "or any other employer" from Paragraph 1 of the Labor Board Order, or, in the alternative, to issue a definitive construction of its decree, delimiting the breadth of effect which the Court intended its decree to have in the future?

STATUTE INVOLVED

The pertinent provisions of the National Labor Relations Act, as amended (61 Stat. 136, 29 U.S.C., Supp. V, Sec. 151, et seq.) are set forth in Appendix A in separate volume, Petitioners' Appendices.

STATEMENT

The petitioner, Communications Workers of America, is a national labor organization, affiliated with the AFL-CIO, having approximately 260,000 members and 730 local unions throughout the United States and Canada. It is the collective bargaining representative

of the employees of approximately 100 employers from coast-to-coast, and has one or more collective bargaining agreements in effect with each. In addition, it conducts constant organizational campaigns among the employees of other employers. These contracts and organizational campaigns are administered through nine (9) geographical administrative districts, four (4) nationwide administrative directors, and the local unions. (The Constitution of CWA, Articles IV; V; IX, Section 2; XI; XIII; and Appendix A (fly leaf map) to such Constitution is in the Board's record as GCX 3; introduced in evidence, B.A. 85a).

The employees of Ohio Consolidated Telephone Company hold their membership in, and are represented in collective bargaining matters by, three CWA local unions — Local 4372, Local 4373, and Local 4374. The petitioner, Local 4372, has as its geographical area of jurisdiction, and has as its members, those non-supervisory employees of Ohio Consolidated Telephone Company working in the Portsmouth, Ohio, and contiguous operations of Ohio Consolidated.

Although the members of all three of the above named local unions went on strike at Ohio Consolidated on July 14, 1956 (I.R.; B.A. 3a), and their representatives participated in contract negotiations with Ohio Consolidated (B.A. 86a), only Local 4372 was a Respondent before the Labor Board. No charges were filed against the other two CWA local unions and there was no evidence that members of these two local unions participated in any of the untoward conduct alleged in the Board's complaint or shown in evidence.

Ohio Consolidated Telephone Company is one of the subsidiary operating companies of the General Telephone Company, which operates a nationwide tele-

phone system similar to that of the American Telephone and Telegraph Company. General Telephone Company of Ohio is a sister subsidiary company to Ohio Consolidated. (B.A. 143a).

General Telephone of Ohio and Ohio Consolidated have some top managerial officials in common,[2], and throughout the strike supervisory employees of General Telephone of Ohio and other subsidiary companies of the General System were loaned to, and performed work for, Ohio Consolidated during the strike.[3]

These supervisory employees of General performed work for Ohio Consolidated normally done by the employees on strike. The only other employees who worked during the strike were Ohio Consolidated's supervisory force, several confidential secretaries to management officials who were not eligible for union membership, and one female employee who abandoned the strike and returned to work without interference or molestation from her fellow workers. They also performed some work normally done by strikers. None of these employees was deterred from continuing work by conduct of strikers. (B A. 114a, 115a, 142a; I.R., B.A. 53a-58a).

The Trial Examiner considered 27 specific incidents of misconduct alleged in the Board's complaint to have been committed by striking members of Local 4372 during the strike which lasted in excess of six months. The Board approved all of the Trial Examiner's find-

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[2]For instance, Mr. Dick Zachman who is Public Relations Director for both of the sister companies. (I.R.; B.A. 10a).

[3]The Intermediate Report names the following supervisory employees of General Telephone of Ohio who worked for Ohio Consolidated during the strike: District Plant Supt. Casteel; Plant Engineer Stratton; Chief Operator Pat Bauer; Construction Supervisors Ghearing, Foster and Seward; and Supervisor Wemple. In addition, other supervisors of the General System were working. (I.R., B.A. 29a, 44a.)

ings of fact, but reversed his conclusion that no unfair labor practices had been committed. The Board concluded that ten instances of misconduct by striking employees directed against supervisors, one instance of misconduct directed against the confidential secretary to the Vice President of Ohio Consolidated, and portions of three instances of misconduct directed against supervisors, which were enmeshed with coercive misconduct on the part of the supervisors themselves, were violative of Section 8 (b) (1) (A) of the Act, because such acts "tended" to restrain and coerce employees.[4] (Board's Decision, B.A. 78a-80a).

Thus, the improper conduct found by the Board was limited to violence and threats of violence by strikers; and the only employees who were, or could have been, restrained or coerced in their Section 7 rights—that is, their right to work for Ohio Consolidated during the strike — were those employees who were working or may have desired to work. Neither employees of

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[4]Other conclusions of the Trial Examiner and rulings of the Board were as follows:

(1) He found that Company supervisors provoked all of the misconduct in seven instances and provoked part of the misconduct in three other instances; that the Company condoned and ratified the first act of threatened violence during the strike, which act was committed *against strikers* by employees of independent contractors (no violence by strikers against employees of independent contractors was shown in evidence); and that the District Plant Superintendent of General Telepone of Ohio, who was working for Ohio Consolidated, committed the first act of actual violence during the strike when he pushed a striker down an alley with an Ohio Consolidated truck, resulting in a "compressed vertebra" and other injuries to the striker. These findings were approved by the Board. (B.A. 7a, 8a, 19a, 20a, 78a).

(2) The Trial Examiner further found that President Williams and General Counsel Griffith of Ohio Consolidated employed private investigators to come to Portsmouth; that Public Relations Director Zachman (for both Ohio Consolidated and General Telephone of Ohio), Industrial Relations Director Lennberg, and either General Plant Manager Pratt or Division Manager Kimball *instructed* the investigators *"to remove four of the strike leaders from further strike activity in any manner they saw fit — by running them down with an automobile if necessary,"* that photographs of the four strikers were displayed to the investigators; that the investigators were discharged, in part, because they had not gotten the four strike leaders out of the picture; and that on the occasion of the

other employers, nor the right to work for other employers, could have been affected.

Local 4372 was held responsible for these acts because its officers and members participated in them. The Communications Workers of America were held responsible only derivatively because it approved and financially supported the strike of Local 4372 (B.A. 6a, 54a). There was no evidence that CWA or any of its officers instigated or approved any improper acts other than by the continuance of financial support to the strike and by the failure publicly to repudiate the strikers engaging in such conduct.

Upon these findings and conclusions, the Board's Order provided in Paragraph 1 that both CWA and Local 4372 "and their respective officers, representatives, agents and assigns:

> "1. Cease and desist from *in any manner* restraining or coercing employees of Ohio Consolidated Telephone Company *or any other employer* in the exercise of the rights guaranteed in Section 7 of the Act." (Emphasis supplied).

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discharge Division Manager Kimball stated to the investigators that, had they gotten the four strike leaders out of the picture, "the negotiations and the strike and everything would be disintegrated entirely." These findings of fact were tacitly approved by the Boa[illegible]. (Emphasis supplied). (B.A. 9a-12a, 80a-81a).

(3) Relying upon the decision of this Court in *NLRB v. Indiana & Michigan Electric Co.*, 318 U.S. 9, 18, 19, the Trial Examiner concluded that the foregoing facts were relevant and should be considered as to whether Ohio Consolidated had established a policy pattern of violence (B.A. 7a) and had conspired to engage in illegal conduct which constituted an abuse of the Board's processes. (B.A. 13a). Upon the consideration of such facts, the Trial Examiner concluded that Ohio Consolidated had displayed contempt for the rights of its own employees and had abused the processes of the Board by threatening its employees with physical violence, by hiring investigators to engage in violence, and by engaging in actual violence against striking employees. (B.A. 59a).

While the Board apparently agreed with the conclusion that Ohio Consolidated restrained and coerced its employees by this conduct, it held that such evidence and findings were irrelevant and refused to consider them (Board's Decision, p. 4, Par. #3, B.A. 81a).

There was no pleading, allegation, evidence or finding in the record that employees of "any other employer" than Ohio Consolidated were, or could have been restrained or coerced in their Section 7 rights; nor was there any pleading, allegation, evidence or finding that such restraint or coercion had been accomplished "in any manner" other than by acts and threats of violence on the part of striking members of Local 4372.

To avoid the expense of litigation, Petitioners (Respondents below) proposed to the Board that they would agree to a consent decree of enforcement if the words "in any manner" and "or any other employer" were stricken so that the Order would be restricted to the evidence and findings in the case. This proposal was declined and Petitioners resisted enforcement unless such modifications were made by the Court of Appeals.

In an effort to supply the deficiencies in the record, Counsel for the Labor Board, in their brief, alluded to two previous *unreported* orders of the Board, based upon compromise settlement agreements made between CWA and others of its affiliated local unions, the Labor Board, and Indiana Bell Telephone Company in one case and Southern Bell Telephone Company in the other.

Local 4372 was not a party to either of the previous cases. These unreported orders of the Board were not in evidence and the Board made no reference to them in its decision or order; but it was contended that the Board *could* have relied upon such previous determinations and *could* have concluded that both Respondents

below were in "general opposition to the purposes of the Act."[5]

Counsel for the Board in alluding to these previous unreported orders did not report to the Court that they were based upon *compromise* settlement stipulations, containing no admissions of prejudicial facts, and that, consequently, the orders of the Board, based upon the compromise settlements, contained no findings of fact that CWA or any other party to the compromises had violated the Act.[6].

As a result, Petitioners were forced at much expense to print as Appendices to their brief in the Court of Appeals the entire compromise settlement stipulations and orders of the Board in both the Indiana Bell and Southern Bell cases, in order to demonstrate to the Court of Appeals that no prejudicial conclusions could be based upon these matters, not of record, because they were, themselves, based upon privileged agreements and because they, themselves, made no prejudicial findings of fact that the Act had been violated. (Portions of Petitioners' Brief in the Court of Appeals, substantiating the foregoing, are reprinted as Petitioners' Appendix C in a separate volume. The Indiana Bell and Southern Bell Compromise Settlements and Board Orders are also reprinted in full as Appendices D and E in the separate volume.)

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[5]The portions of the General Counsel's brief, filed on behalf of the Board, which inject the compromise settlements into the case *for the first time* and contain argument based thereon, are reprinted as Petitioners' Appendix B in a separate book.

[6]Paragraph 8 of both the Indiana Bell and Southern Bell Compromise Settlement Stipulations contains the following express provision:

> "it is understood that the signing of this stipulation by Respondents does not constitute an admission by them that they have violated the Act."

Accordingly, the Board made no finding of fact that the Respondents had violated the Act in either of the cases.

Such was to no avail, however, for the Court of Appeals, after modifying Paragraph 1 of the Board's Order by striking the words "in any manner," enforced the words "or any other employer."

As aforesaid, there was no pleading, allegation, evidence or finding *in the record* upon which enforcement of the language "or any other employer" could be based. Therefore, while the summary opinion of the Court of Appeals does not indicate what substantive considerations the Court entertained,[7] it must necessarily have based this portion of its opinion and decree upon prejudicial conclusions drawn from these privileged, compromise settlements, which were not of record in the case, and upon the orders of the Board based upon them, which, however, made no findings of fact that either of Petitioners had previously been responsible for violations of the Act.

By Motion for Reconsideration and Rehearing (R. 17) Petitioners again requested the Court of Appeals to delete the language "or any other employer" from the Board's Order, as enforced; or, in the alternative, that the Court issue a definitive ruling that its Decree would not be construed in the future to apply to employees of employers other than those within the geographical area covered by the operations of Local 4372.

The Motion was denied on June 26, 1959, without clarification of the effect and scope which would be placed upon the Decree in possible future contempt proceedings (R. 18).

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[7]The opinion does indicate, however, that the Court considered the briefs of the parties which contained this material, even though it was not in the record.

REASONS FOR GRANTING THE WRIT

I.

THE DECREE OF THE COURT OF APPEALS IS INCONSISTENT WITH CONTROLLING PRECEDENT ESTABLISHED IN DECISIONS OF THIS COURT AND HERETOFORE UNIFORMLY FOLLOWED BY THE COURTS OF APPEAL.

This Court has, heretofore, in several decisions had occasion to consider and define the permissible breadth and scope of cease and desist orders of the Labor Board, and enforcement decrees of the Courts of Appeal, issued pursuant to Sections 10 (c) and 10 (e) of the National Labor Relations Act.[8]

The basic construction which has been adhered to in all subsequent decisions, is found in *NLRB v. Express Publishing Co.*, 312 U. S. 426; 434, 435, 61 S. Ct. 693, 8 LRRM 415, where the Court said:

> "Congress has itself afforded a guide pointing to the appropriate limits of the order which the Board is to make in restraining unfair labor practices. By its definition and classification of unfair labor practices in the statute it is shown that they are not always so similar or related that the commission of one necessarily admits of an order restraining all.
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> * * *
>
> "In view of the authority given to the Board by 10 (c) carefully restricted to the restraint of such unfair labor practices as the Board has found the employer to have committed, and of the broad language of 10 (e) authorizing the courts to modify the order of the Board wholly or in part, we can hardly suppose that Congress intended that the Board should make or the court should enforce orders which could not appropriately be made in

[8]Sections 10 (c) and 10 (e) are reprinted in Appendix A. See separate volume, Petitioner's Appendices.

judiciai proceedings. * * * *In the light of these provisions we think that Congress did not contemplate that the courts should, by contempt proceedings, try alleged violations of the National Labor Relations Act not in controversy and not found by the Board and which are not similar or fairly related to the unfair labor practice which the Board has found.*" (Emphasis supplied).

In *May Department Stores Co. v. NLRB*, 326 U. S. 376, 390, 393, 66 S. Ct. 203, 17 LRRM 643, the Court quoted its *Express Publishing Company* ruling as follows:

> " 'To justify an order restraining other violations it must appear that they bear some resemblance to that which the employer has committed or that danger of their commission in the future is to be anticipated from the course of his conduct in the past.' P. 437."

In that case the Court stated further:

> "While contempt proceedings can be instituted only by the Board and in the public interest, the possibility of contempt penalties by the court for future Labor Act violations adds sufficient additional sanction to make material the difference between enjoined and non-enjoined employer activities."

In both of these decisions the Court set aside the portion of the Board's order not supported in the evidence. In them, as in the present case, there was no evidence or finding in the record of past course of conduct which authorized an extension of the injunction against future violations beyond the parties involved in the controversy shown in evidence.

The Amendments to the Act, subsequent to these decisions, made no changes which alter them as precedents and they have heretofore been uniformly followed

by all of the Courts of Appeals, including the Sixth Circuit.

In *NLRB v. Local 369, International Hodcarriers, Builders and Common Laborers Union of America*, 240 F. 2d 539, 39 LRRM 2377 (CA-3, 1957), the Third Circuit quoted the *Express Publishing Company* case, as follows:

> " 'So far as respondents' past conduct may be thought to have had any effect on the rights guaranteed by Section 7, such consequences would be effectively prevented by the prohibition of such an order without drawing it so broadly as to forbid all other unrelated unfair labor practices.' " (312 U. S., at p. 438).

In the recent case of *International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, General Drivers and Helpers, Local 554, AFL-CIO v. National Labor Relations Board*, 262 F. 2d 456, 43 LRRM 2197 (CA-DC., Dec. 4, 1958) the Court stated:

> "But we believe it more appropriate to follow the reasoning of the Supreme Court in *Express Publishing*, that a court of appeals should not become a labor court of first instance by virtue of contempt powers. We therefore agree with the Sixth Circuit that the better view is 'that the order should not go beyond the evidence supporting the unfair labor practices alleged.' " (Quoting *NLRB v. Cleveland-Cliffs Iron Co.*, 133 F. 2d 295, 302, 12 LRRM 550 (CA-6, 1943).

See also:

NLRB v. Armco Drainage and Metal Products, 220 F. 2d 573, 35 LRRM 2536 (CA-6, 1955);

News Printing Co. v. NLRB, 231 F. 2d 767, 37 LRRM 2656 (CA-D.C., 1956);

Cone Brothers Contracting Co. v. NLRB, 235 F. 2d 37, 38 LRRM 2318 (CA-5, 1956);

NLRB v. Nashua Mfg. Corp., 218 F. 2d 886, 35 LRRM 2371 (CA-5, 1955).

The Board also, until quite recently, considered itself bound by these precedents of this Court, and all Board orders, except one, which have been cited by its counsel[9] in support of the language "or any other employer" have restricted the geographical area in which the order was to be effective, to the area in which the primary actor (which here would be Local 4372) operates and in all of them (except *O. W. Burke Company*, where such was clearly implied from the facts recited) the Board made a *specific* finding that the Respondent intended to extend its coercive conduct to employees of other employers in *that* geographic area.

The one exception is the case of *Local 140, United Furniture Workers of America, CIO (Brooklyn Spring Corporation)* 113 NLRB 815, 816, enforced 233 F. 2d 539 (CA-2). It appears from the Second Circuit decision that the language "or any other employer" was not challenged on appeal. Furthermore, the *only* respondent in that case was a local union. Hence that case is not authority for the use of such language against a parent union whose operations are nationwide in scope and which may be derivatively responsible for the acts of hundreds of local unions.

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[9]*Local 294, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, AFL-CIO (Valetta Trucking Company)*, 116 NLRB 842, 846; *United Mine Workers of America, District 2, (Mercury Mining and Construction Corporation,)* 96 NLRB 1389, 1392, enforced 202 F. 2d 177 (C.A. 6); *United Mine Workers of America, District 31 (L. E. Cleghorn)*, 95 NLRB 546, enforced 198 F. 2d 389 (C.A. 4), certiorari denied 344 U.S. 884; *United Mine Workers of America (West Kentucky Coal Co.)*, 93 NLRB 916, 919, enforced, 195 F. 2d 961 (C.A. 6), certiorari denied 314 U.S. 920; *Local 983, United Brotherhood of Carpenters and Joiners of America, AFL-CIO (O. W. Burke Company)*, 115 NLRB 1123, 1125).

In *Bitner Fuel Co.*, 92 NLRB 953, 955, enforced 190 F. 2d 251 (C.A.-4), the Board itself specifically held that such broad orders would be issued only where "the record clearly indicated that the respondent * * * was engaged in a planned program to apply the same technique to all" other employers "within its jurisdiction."

In this case, unless the unreported orders of the Board in the Indiana Bell and Southern Bell cases (which were not put in evidence and to which the Board made no reference in its decision and order), are to be considered, there is no justification for a departure from the established precedents of this Court and the language "or any other employer" should be stricken from the Board's order enforced by the Court of Appeals.

II.

THE QUESTION OF WHETHER ORDERS OF THE BOARD BASED UPON COMPROMISE SETTLEMENTS OF UNFAIR LABOR PRACTICE CHARGES CAN BE GIVEN PREJUDICIAL EFFECT IN OTHER CASES IS A MATTER OF GRAVE IMPORTANCE TO ALL PARTIES DEALING WITH THE BOARD, EMPLOYER AND UNION ALIKE.

One of the most basic and traditional principles of public policy inherent in our judicial system is that compromise settlements of litigation are to be encouraged, and, hence, that offers and agreements of compromise cannot be construed to be admissions or used as a basis for prejudicial conclusions in future legal proceedings. *Williams v. First National Bank*, 216 U. S. 582, 30 S. Ct. 441, 54 L. ed 625; *St. Louis Mining and Manufacturing Co. v. Montana Mining Co.*, 171 U. S. 650, 19 S. Ct. 61, 43 L. ed 320.

An admission of fact in such an offer or agreement can be the basis of a conclusion, but the matter com-

promised cannot be the basis of any future conclusions. The Board recognized this in its orders in the Indiana Bell and Southern Bell cases by entering findings of fact upon the stipulations of fact made by the parties and *by its failure* to enter any findings that CWA had violated the Act. Thus it found as a matter of fact in each case that the controversy affected interstate commerce and that CWA and the affiliated locals involved were labor organizations; but it made no findings in either case on the subject matter of compromise — that is, guilt of the unfair labor practices charged.

Compromise settlements of unfair labor practice cases are based upon valuable consideration both to private parties and to the Board. *Twenty-third Annual Report of the National Labor Relations Board*, 1958, p. 4, dramatically illustrates the importance to the Board and its General Counsel (and, of course, to the general public) of the ability to dispose of cases by settlement when it states:

> "The General Counsel's staff in the field offices closed 6,654 unfair labor practice cases without formal action, and issued complaints in 822 cases.
>
> "Of the 6,654 unfair labor practice cases which the field staff closed without formal action, *725, or 11 percent, were adjusted by various types of settlements;* 2,242 or 34 percent, were administratively dismissed after investigation. In the remaining 3,687 cases, or 55 percent of the cases closed without formal action, the charges were withdrawn; in many of these cases *the withdrawals actually reflected settlement of the matter at issue between the parties.*"

Thus, it can be safely concluded that at least one third of the entire business of the General Counsel's office was transacted and disposed of by agreement and com-

promise. Without the ability to close cases by settlement, hundreds of additional professional employees and millions more in dollars would be required to administer the Act annually.

Untold millions of dollars are saved annually by private parties through compromise and settlement of unfair labor practice cases. However, if these parties are unable to know that compromise settlements with the Board will be non-prejudicial, they will not long continue this practice.

Nothing could more effectively undermine the administration of the Act than for the Courts to permit the Board and its General Counsel to breach this most basic concept of public policy and of honesty and good faith by using compromise settlements, which contain no admissions of guilt, as a basis for prejudicial conclusions in future cases.

III.

THE DECISION OF THE SIXTH CIRCUIT IN THIS CASE IS IN DIRECT CONFLICT WITH A CONCURRENT DECISION OF THE FIFTH CIRCUIT.

The facts of this case are substantially identical to the facts recited in the decision of the Court of Appeals for the Fifth Circuit in *NLRB v. Local 926, International Union of Operating Engineers, AFL-CIO*, 267 F. 2d 412, 44 LRRM 2200 (CA-5, May 26, 1959); however, the opinions and decrees of the two courts are diametrically opposite in the conclusions reached. Unfortunately Petitioners could not direct the attention of the Sixth Circuit to this conflict as their Motion for Reconsideration and Rehearing was filed on June 2, 1959, whereas the Fifth Circuit decision was first published unofficially only on June 8 by the Bureau of National Affairs.

From the facts in the two cases, one would draw a conclusion that the Labor Board has abandoned its policy of adherence to the decision of this Court in *Express Publishing Company, supra,* and has adopted instead a policy of repudiating the privileged status of compromise settlement agreements which it has made.

Because the decision of the Fifth Circuit so appropriately expresses the views which Petitioners regard to be legally and morally correct on the facts of the two cases, they take the liberty of quoting from it at length:

> "The Union makes two contentions. * * * Second, the Union contends that the facts in the case do not justify an order as broad as the one issued by the Board.
>
> * * *
>
> II. The scope of the order is a different matter. The order, in part, requires the Union to:
>
> > " '1. Cease and desist from engaging in, or inducing or encouraging the employees of any employer, other than Columbus Construction Company, to engage in, a strike or concerted refusal in the course of their employment, to use, manufacture, process, transport, or otherwise handle or work on any goods, articles, materials, or commodities, or to perform any services where an object thereof is to force or require any employer or other person to cease using, selling, handling, transporting, or otherwise dealing in the products of, or to cease doing business with Columbus Construction Company, *or with any other employer or person.*' (Emphasis by the Court)
>
> "A 'broad order' was not requested in the pleadings, at the hearing, in argument, or in briefs before the Trial Examiner. The Trial Examiner recommended the usual order requiring the Union to cease and desist from inducing secondary em-

ployees to strike or to refuse to handle goods where an object is to force anyone to stop doing business with Columbus, the primary employer. The Board attempts to justify the breadth of its order on the ground that 'the Respondent has engaged in similar violations in respect to other employers in the area * * * [and] it can be reasonably expected that the Respondent will continue to commit similar violations in the future.' The alleged 'similar violations' were two Campbell Coal cases. (Footnote omitted)

"At the trial of the case, the government introduced no evidence relating to any other instances of alleged violations by the Union showing a statewide or area-wide policy of engaging in secondary boycotts. No mention was made of the Campbell Coal cases. * * * As a matter of fact no evidence was taken in those cases upon which the Board could base a determination as to whether the Union had violated the Act. The Campbell Coal cases were terminated without prejudice by a 'Settlement Stipulation' containing a provision that the Union 'does not admit it has committed the acts or has engaged in the unfair labor practices alleged in the consolidated complaint." (Footnote omitted)

"Section 10 (c) of the Act expressly authorizes the Board, upon finding an unfair labor practice, to enter an order requiring the offending party 'to cease and desist from such unfair labor practice, and to take such affirmative action * * * as will effectuate the policies of this Act.' This is broad language. But it imposes a corresponding responsibility not to issue a broad order without the record to support it.

"In this case the order is designed to protect not only the employers doing business with Columbus Construction Company but 'any other employer or person.' There is nothing in the record to justify any such broad coverage. To find support for

its order, the Board must go beyond the record, to the Campbell Coal cases, and, in effect, repudiate the stipulation solemnly entered into by the Board.

"We are aware of the considerations supporting a broad grant of discretion to the Board in determining the proper remedy for a violation of the Act. We consider more important, and basic to a fair administration of the Act, the hard-won principle of Anglo-American law that a judgment or order must find adequate support in the record. An order of a court or federal agency that goes beyond the record to penalize an offender as a bad actor smacks too much of attainder to be acceptable to this Court. We are committed to a narrower view of the proper scope of orders that may furnish the basis for contempt proceedings. *NLRB v. Ford Motor Co.*, 5 Cir., 1941, 119 F. 2d 326, 8 LRRM 656; *NLRB v. Dallas General Drivers, etc., Local 745*, 5 Cir., 1956, 228 F. 2d 702, 37 LRRM 2356; *Truck Drivers Local Union 728 v. NLRB*, 5 Cir., April 8, 1959, ... F. 2d ....., 43 LRRM 2813. On this issue we are in general agreement with *International Brotherhood of Teamsters, etc. v. NLRB*, U.S. App. D. C. 1958, 262 F. 2d 456, 43 LRRM 2198 and *National Labor Relations Board v. Cleveland-Cliffs Iron Co.*, 6 Cir., 1943, 133 F. 2d 295, 12 LRRM 550. See also *NLRB v. Express Publishing Co.*, 1941, 312 U.S. 426, 61 S. Ct. 693, 85 L. Ed. 930, 8 LRRM 415.

"Accordingly, we modify the order of the Board by deleting the phrase of the first paragraph: '*or with any other employer or person.*' As modified, we grant enforcement of the order."

IV.

THE WORDS "OR ANY OTHER EMPLOYER" IN THE BOARD'S ORDER AS ENFORCED BY THE COURT, WITHOUT ANY GEOGRAPHIC LIMITATION AND WITHOUT ANY EXPRESSION IN THE COURT'S DECREE DELIMITING THE EFFECT OF ITS INJUNCTION, CONSTITUTE THE COURT OF APPEALS A COURT OF FIRST INSTANCE FOR THE TRIAL OF UNFAIR LABOR PRACTICES.

With, or without, a consideration of the orders of the Board based upon compromise settlement in the *Indiana Bell* and *Southern Bell* cases, the words "or any other employer" constitute the Court of Appeals a court of first instance for the trial of future unrelated unfair labor practices.

(a) Local 4372 was not even a party to the Settlement Stipulations nor a Respondent to the Order of the Board in the *Indiana Bell* and *Southern Bell* cases which the Board contended could be used against it. There was no evidence in the record in this case that any employees, other than those working for Ohio Consolidated, were, or could have been, restrained or coerced in the exercise of their rights under Section 7 of the National Labor Relations Act, as amended. The fact that employees of other employers, not involved in the labor dispute, may have heard of improper conduct engaged in by members of Local 4372, would be immaterial unless it were shown that they were asked to perform work for Ohio Consolidated during the strike and thereby become its employees. Absent these circumstances, which do not appear in the record, the Section 7 rights of employees other than those working for Ohio Consolidated were not involved in the strike.

The operations of Petitioner Local 4372 are confined to a part of the State of Ohio and to the representation of the employees of only one employer — Ohio Con-

solidated. An injunction, the scope of which extends beyond the geographical area of its operations, can be construed to render Local 4372 responsible for the acts of other CWA affiliated local unions under some circumstances. The Decree of the Court, which applied to the restraint and coercion of the employees of Ohio Consolidated "or any other employer," regardless of location, invites the trial in the Court of Appeals of allegations of initial labor act violations. Thus, the Court, unless the effect of its decree is delimited by appropriate language, legally can be asked to adjudicate complicated factual questions of agency involving the alleged responsibility of Local 4372 for acts of other CWA local unions in widely divergent geographical areas. This Court has already held in *Express Publishing Company, supra,* and *May Department Stores, supra,* that it was not the intention of Congress that the initial determination of such factual questions should be vested in the Courts of Appeal. A "Court of Appeals should not become a labor court of first instance by virtue of its contempt powers.' *International Brotherhood of Teamsters v. NLRB,* 262 F2d 456, (CA D. C. 1958)." *Morrison Knudsen, Inc. v. NLRB,* ..... F2d ....., 44 LRRM 2680, 2681 (CA-9, No. 16301, August 10, 1959).

It must also be said that the decision of the Board in this case and its contention in its brief in the Court of Appeals, that employees of other employers may have heard of such conduct and that Section 8 (b) (1) (A) was thereby violated, seeks to make a mere police statute of the Act, and mere police magistracies of the Courts of Appeal if they are authorized to determine initial Labor Act violations. Congress, in enacting the Labor Act, left to the states the police function of con-

trolling violence. *San Diego Building Trades Council v. Garmon*, 359 U. S. 236, ... S. St., ..., 43 LRRM 2838. The Act seeks to protect the right of employees to abstain from concerted activity, that is, to work during a strike. It makes no proscription against violence, *eo nomine*, but only against "restraint and coercion."

Without evidence in this case that employees, other than those of Ohio Consolidated, were restrained or coerced in their rights, a decree as to such employees of other employers can only be designed to control violence, or threats thereof, *in vacuo*, which is a police function remaining to the states.

(b) As to the Communications Workers of America, AFL-CIO, there was no pleading, allegation, evidence or finding *in this record* that violence and threats were, or are, an habitual course of conduct or normal pattern of its operations. The Board did not so find and there is no factual basis in the record for such a finding.

In an effort to supply this deficiency in the Court of Appeals, Counsel for the Board injected into their brief the *compromise* settlements in two isolated CWA labor board cases, although there is no indication that the Board considered these cases in formulating its order.

Since CWA made no admissions of guilt in those cases and since the Board made no findings or conclusions of guilt in them, a conclusion that CWA is 'in general opposition to the purposes of the Act,' as contended for by the Board before the Circuit Court, should not be based upon such privileged actions.

Even if the law permitted this to be done in the abstract, such would be improper under the facts shown

by the Settlement Stipulations themselves. Each of the Settlement Stipulations provided a direct remedy by court enforcement if the Board found that CWA had failed to comply with the terms of its agreement. In the *Indiana* case, there has never been any contention that CWA has not fully complied with its agreement and the Board Order. In the *Southern Bell* case, Southern Bell attempted to instigate court enforcement against CWA when one of the local unions party to the agreement breached the compromise settlement. This application of Southern Bell was adjudicated by the Board's General Counsel concurrently with his application, on behalf of the Board, for enforcement of its Order in the present case. On the motion for court enforcement of the *Southern Bell* case, the Board's General Counsel declined to institute legal proceedings, finding:

> "At the inception of a nation-wide strike called against the company, the International Union warned its local unions against engaging in violence or other misconduct. These warnings were heeded by all local affiliates, except one whose strike activity at the company office within its jurisdiction was marked by mass picketing and other misconduct. The misconduct occurred despite the determined efforts of an International Representative to prevent it. On the complaint of the International Representative, the Local Union official responsible for the misconduct was removed from office at the conclusion of the strike. The strike lasted only four days and was entirely peaceful at all other company locations throughout the country." (*General Counsel's Administrative Rulings*, Case No. S-739, November 27, 1958, 43 LRRM 1237.)

The findings of the Board's highest authorized agent in the above qotation are, to say the least, inconsistent

with the concurrent contentions of the same agent made before the Court of Appeals in this case when he contended that misconduct of members of *one out of three* CWA local unions engaged in the Ohio Consolidated strike reflect a 'general opposition to the purposes of the Act' on the part of CWA itself.

Irrespective of the inconsistency of these contentions, these circumstances are a potent signal of the dangers inherent in the broad scope of the Court's Decree and are a clear indication that it is entirely possible that the Court, in future contempt proceedings, would be asked to determine that CWA has violated the Court's decree in this case because the members of an affiliated local union in another geographical area have, possibly because of incitation by irresponsible local union officers, engaged in acts or threats of violence.

The Communications Workers of America is a nation-wide association, having approximately 260,000 individual members, approximately 730 affiliated local unions, and contractual relations with almost 100 employers. It represents and deals with the employees, not only of these employers, but also of other employers whose employees are being organized. It seems improper that CWA should have been held responsible for the acts of the members of one local union engaged in the strike against Ohio Consolidated, when the members of two other local unions engaged in the same strike were not shown to have engaged in any improper conduct. However, the Board's Order and the Court's Decree takes the position that CWA was responsible, derivatively, for the acts of the members of this local union because it approved the strike and provided financial assistance. This same legal argument of the Board (having been approved by the Court in its Decree and

being carried forward into contempt proceedings) would authorize the Court of Appeals to punish CWA for a myriad of acts and circumstances differing from those in the present case and involving different employers and the members of different local unions. CWA is not an omnipotent presence with the ability to prevent violations by 730 virtually autonomous local unions.

Congress did not intend that the Court of Appeals should try initial Labor Act violations; however, the Court's Decree presumably, without any language of limitation, covers the employees of every one of the employers with whom CWA deals, as well as all other employers in the United States, no matter where located. Under its Decree, the Court of Appeals for the Sixth Circuit, as a court of first instance, can adjudicate all of the issues of fact involved in the actions of an affiliated union in Seattle, Washington, and determine whether an unfair labor practice occurred, whether it was merely an isolated instance, and whether CWA was responsible therefor on vicarious principles.

The Act contemplates that CWA would be entitled to an initial determination of such complicated factual issues by the designated trier of the facts — the Labor Board — without being confronted, in the first instance, with the onerous prospect of being held in contempt of a Court of Appeals.

CONCLUSION

For the reasons stated, it is respectfully submitted that the Petition for a Writ of Certiorari should be granted.

Respectfully submitted,

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SEP 22 1959

JAMES R. BROWNING, Cl

In the

Supreme Court of the United States

OCTOBER TERM, 1959

NO. 418

COMMUNICATIONS WORKERS OF AMERICA, AFL-CIO, AND LOCAL UNION NO. 4372, COMMUNICATIONS WORKERS OF AMERICA, AFL-CIO

Petitioners

NATIONAL LABOR RELATIONS BOARD,

Respondent

PETITIONER'S APPENDICES

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APPENDIX A

The pertinent provisions of the National Labor Relations Act, as amended, (61 Stat. 136, 29 U.S.C., Supp. V. Sec. 151, *et seq*), are as follows:

29 U.S.C., Supp. V, Sec. 152:

"Sec. 2. When used in this Act —

* * *

"(3) The term 'employee' shall include any employee, and shall not be limited to the employees of a particular employer, unless the Act explicitly states otherwise, and shall include any individual whose work has ceased as a consequence of, or in connection with, any current labor dispute or because of any unfair labor practice, and who has not obtained any other regular and substantially equivalent employment, but shall not include any individual employed as an agricultural laborer, or in the domestic service of any family or person at his home, or and individual employed by his parent or spouse, or any

individual having the status of an independent contractor, or any individual employed as a supervisor, or any individual employed by an employer subject to the Railway Labor Act, as amended from time to time, or by any other person who is not an employer as herein defined."

29 U.S.C., Supp V, Sec. 157:

"Sec. 7. Employees shall have the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection, and shall also have the right to refrain from any or all of such activities except to the extent that such right may be affected by an agreement requiring membership in a labor organization as a condition of employment as authorized in section 8 (a) (3)."

29 U.S.C., Supp. V, Sec. 158 (b) (1) (A):

"Sec. 8 (b) It shall be an unfair labor practice for a labor organization or its agents —

"(1) to restrain or coerce (A) employees in the exercise of the rights guaranteed in section 7: * * *"

29 U.S.C., Supp. V, Sec. 160 (c) and (e):

"Sec. 10 (c) The testimony taken by such member, agent, or agency or the Board shall be reduced to writing and filed with the Board. Thereafter, in its discretion, the Board upon notice may take further testimony or hear argument. If upon the preponderance of the testimony taken the Board shall be of the opinion that any person named in the complaint has engaged in or is engaging in any such unfair labor practice, then the Board shall state its findings of fact and shall issue and cause to be served on such person an order requiring such person to cease and desist from such unfair labor practice, and to take such affirmative action including reinstatement of employees with or without back pay, as will effectuate the policies of this Act: Provided, That where an order directs reinstatement of an employee, back pay

may be required of the employer or labor organization, as the case may be, responsible for the discrimination suffered by him: *And provided further,* That in determining whether a complaint shall issue alleging a violation of section 8 (a) (1) or section 8 (a) (2), and in deciding such cases, the same regulations and rules of decision shall apply irrespective of whether or not the labor organization affected is affiliated with a labor organization national or international in scope. Such order may further require such person to make reports from time to time showing the extent to which it has complied with the order. If upon the preponderance of the testimony taken the Board shall not be of the opinion that the person named in the complaint has engaged in or is engaging in any such unfair labor practice, then the Board shall state its findings of fact and shall issue an order dismissing the said complaint. No order of the Board shall require the reinstatement of any individual as an employee who has been suspended or discharged, or the payment to him of any back pay, if such individual was suspended or discharged for cause. In case the evidence is presented before a member of the Board, or before an examiner or examiners thereof, such member, or such examiner or examiners, as the case may be, shall issue and cause to be served on the parties to the proceeding a proposed report, together with a recommended order, which shall be filed with the Board, and if no exceptions are filed within twenty days after service thereof upon such parties, or within such further period as the Board may authorize, such recommended order shall become the order of the Board and become effective as therein prescribed.

" * * *

"(e) The Board shall have power to petition any circuit court of appeals of the United States (including the United States Court of Appeals for the District of Columbia), or if all the circuit courts of appeals to which application may be made are in vacation, any district court of the United States (including the District Court of the United States for the District of Columbia), within any circuit or district, respectively, wherein the unfair labor

practice in question occurred or wherein such person resides or transacts business, for the enforcement of such order and for appropriate temporary relief or restraining order, and shall certify and file in the court a transcript of the entire record in the proceedings, including the pleadings and testimony upon which such order was entered and the findings and order of the Board. Upon such filing the court shall cause notice thereof to be served upon such person, and thereupon shall have jurisdiction of the proceeding and of the question determined therein, and shall have power to grant such temporary relief or restraining order as it deems just and proper, and to make and enter upon the pleadings, testimony, and proceedings set forth in such transcript a decree enforcing, modifying, and enforcing as so modified, or setting aside in whole or in part the order of the Board. No objection that has not been urged before the Board, its member, agent, or agency, shall be considered by the court, unless the failure or neglect to urge such objection shall be excused because of extraordinary circumstances. The findings of the Board with respect to questions of fact if supported by substantial evidence on the record considered as a whole shall be conclusive. If either party shall apply to the court for leave to adduce additional evidence and shall show to the satisfaction of the court that such additional evidence is material and that there were reasonable grounds for the failure to adduce such evidence in the hearing before the Board, its member, agent, or agency, the court may order such additional evidence to be taken before the Board, its members, agent, or agency, and to be made a part of the transcript. The Board may modify its findings as to the facts, or make new findings, by reason of additional evidence so taken and filed, and it shall file such modified or new findings, which findings with respect to questions of fact if supported by substantial evidence on the record considered as a whole shall be conclusive, and shall file its recommendations, if any, for the modification or setting aside of its original order. The jurisdiction of the court shall be exclusive and its judgment and decree shall be final, except

that the same shall be subject to review by the appropriate circuit court of appeals if application was made to the district court as hereinabove provided, and by the Supreme Court of the United States upon writ of certiorari or certification as provided in Sections 239 and 240 of the Judicial Code, as amended (U.S.C., title 28, secs. 346 and 347)"

APPENDIX B

Excerpt of Pages 24 Through 28 From Brief of Counsel for National Labor Relations Board in the Court below, which Inject Into the Case For the First Time, and Seek to Base Prejudicial Conclusions Upon, Compromise Settlement Stipulations in Other Cases.

"III. Whether the Board's Order Is Proper. The Board Contends That the Question Should Be Answered "Yes."

"As previously noted, the Board's order requires respondents to cease and desist from in any manner restraining or coercing the employees of Ohio Consolidated 'or any other employer' in the exercise of their statutory rights. In their answer, respondents contend that the order should not include the words 'or any other employer' on the ground that 'there is no evidence in the record that the employees of any other employer (except while in the employ of [the Company] and therefore its employees) were in any manner affected by the facts of this case, and * * * there is no evidence of any repeated course or pattern of conduct on the part of Respondents directed toward the employees of any other employer or of employees generally, so that the order of the Board * * * goes beyond the facts of the case and is unauthorized by any substantial evidence in the record and is therefore punitive, rather than remedial, in its scope.' We submit that the Board's order is proper.

"As this Court observed in *N.L.R.B. v. United Mine Workers of America, District 23,* 195 F. 2d 961, 963, certiorari denied, 344 U.S. 920, "The Board has broad power to determine the necessary scope of its orders and it is authorized to restrain other violations the danger of whose commission in the future is to be anticipated from conduct in the past." Both the Board's records in other cases involving the CWA[14] and the record in the instant case made it reasonable for the Board to anticipate further misconduct of the kind prohibited in its order. Thus, more than three years before the strike against Ohio Con-

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"[14] The Board and this Court may, of course, take notice of such proceedings, See *N. L. R. B.* v. *Vulcan Forging Co.*, 188 F. 2d 927, 930 (C. A. 6), affirming as to this point 85 NLRB 621, 626; *N .L. R. B.* v. *Armstrong Tire & Rubber Co.*, 43 LRRM 2470, 2471, n. 2 (C.A. 5, January 30, 1959); *N.L.R.B.* v. *Crowley's Milk Co.*, 208 F. 2d 444, 445-446 (C.A. 3); *N.L.R.B.* v. *Reed & Prince Mfg. Co.*, 205 F. 2d 131, 139-140 (C.A. 1), certorari denied, 346 U.S. 887."

solidated, the Board issued an order against CWA, pursuant to a settlement stipulation executed by it, prohibiting conduct with respect to employees of the Indiana Bell Telephone Company similar to that in which CWA engaged during the Ohio Consolidated strike.[15] Thereafter, during the Ohio Consolidated strike here involved, the Board issued another order against CWA, pursuant to a settlement stipulation executed by it, prohibiting such conduct with respect to employees of the Southern Bell Telephone and Telegraph Company.[16] This history shows that a Board order protecting Indiana Bell's employees did not obviate the need for subsequent orders prohibiting similar conduct against employees of Southern Bell and Ohio Consolidated.[17] In the circumstances, it was wholly reasonable for the Board to issue here an order prohibiting such conduct with respect to employees of any employer. The Act does not require the Board to proceed against a repeated

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"[15] Specifically, the order required CWA to cease and desist from assaulting, physically harming or otherwise using force and violence against Indiana Bell's employees, or threatening to do so; picketing Indiana Bell's premises in such a manner as to deny to employees and others ingress to and egress from said premises; physically preventing employees and others from working at Indiana Bell's plants; engaging in or threatening to engage in reprisals against non-striking employees and others both in and away from Indiana Bell's plants; or in any other manner restraining or coercing Indiana Bell's employees in the exercise of their statutory rights. The case is unreported; it is docketed on the records of the Board as Case No. 35-CB-123. Also, subject to the order are 15 CWA locals, none of them the local involved in the case at bar."

"[16] That order required CWA to cease and desist from assaulting, physically harming or otherwise using force and violence against any employees of or applicants for employment by Southern Bell, or others, or attempting to do so; picketing Southern Bell's premises in such a manner as to deny employees and others free ingress to egress from said premises; making threatening telephone calls to employees; following employees and others from Southern Bell's premises in order to restrain or coerce them; throwing objects at, against, or toward employees or others entering or leaving Southern Bell's premises, or at or against such premises in which employees are working; restraining or coercing Southern Bell's employees by damaging or destroying, or attempting to damage or destroy, property belonging to them or to Southern Bell; or in any other manner restraining or coercing Southern Bell's employees in the exercise of their statutory rights. The cases are unreported; their docket numbers on the records of the Board (each preceded by "10-CB") are 291, 329, 331, 333, 334, 337, 340, 341, 349-352, 354, 355, 357, 359, 360, 365-367, 369, 371, 373, 375, 376, 382, 411, and 416. Also subject to the order are 27 CWA locals, none of them the local involved in the case at bar."

"[17] The Indiana Bell order required CWA to post notices in 1 State, and the Southern Bell order required such posting in 9 states."

offender on a piecemeal basis. See *N.L.R.B. v. Springfield Building and Construction Trades Council*, 43 LRRM 2320, 2323-2324 (C.A. 1, December 31, 1958).

"Moreover, the record in the case at bar, even standing alone, made it reasonable for the Board to anticipate that respondents might repeat their misconduct with respect to the employees of other employers. Thus, all of respondent local's strike directors and many of its picket captains took part in respondents' unfair labor practices over a two-month period, beginning four months after the strike was called. Nevertheless, respondents' top officials, although they learned of these incidents (B.A. 231a-240a, 427a-474a, 491a, 395a), did not remove the strike leaders. The record shows that all of the strike directors retained their positions (except one who resigned and subsequently became a picket captain). Moreover, respondent CWA continued to pay strike benefits to the strikers, provided bail for strikers jailed for misconduct, and continued publicly to espouse the strikers' cause (B.A. 195a-198a, 204a-205a, 212a-213a, 486a-492a). Under such circumstances, it was reasonable for the Board to attempt to insure that respondents' general opposition to the purposes of the Act would not be reflected in their conduct with respect to the employees of other employers.[18]

"Finally, the record warrants an inference that respondents' misconduct in the case at bar restrained and coerced employees of other employers. The record suggests that a number of the immediate victims of respondents' unfair labor prcatices were on the payroll of employers other than Ohio Consolidated (B.A. 112a-113a, 143a-144a, 158a, 176a-177a, 205a-206a, 208a,

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"[18] The order here in question is similar to other orders issued by the Board in analogous cases. See *Local 410, United Furniture Workers of America, CIO (Brooklyn Spring Corporation)*, 113 NLRB 815, enforced, 233 F. 2d 539 (C.A. 2); *Local 294, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, AFL-CIO (Valetta Trucking Company)*, 116 NLRB 842, 846; *United Mine Workers of America, District 2 (Mercury Mining and Construction Corporation)*, 96 NLRB 1389, 1392, enforced, 202 F. 2d 177 (C.A. 6); *United Mine Workers of America, District 31 (L. E. Cleghorn)*, 95 NLRB 546, 550, enforced, 198 F. 2d 389 (C.A. 4) certiorari denied, 344 U.S. 884; *United Mine Workers of America (West Kentucky Coal Co.)*, 92 NLRB 916, 919, enforced, 195 F. 2d 961 (C.A. 6), certiorari denied, 344 U.S. 920; *Local 983, United Brotherhood of Carpenters and Joiners of America, AFL-CIO (O. W. Burke Company)*, 115 NLRB 1123, 1125."

214a). Moreover, respondents' misconduct was publicized in newspapers and over the radio, and employees of other employers were accordingly put on notice that respondents were prepared to further their cause by unlawful acts. Furthermore, several other unions—including another local of respondent CWA—gave financial assistance to respondents' strike (B.A. 7a; 380a-381a); and it is reasonable to suppose that at least some of their members were aware of respondents' strike tactics.

"For these reasons, we believe that the Board's order is entitled to this Court's approval."

APPENDIX C

Excerpt of Pages 16 Through 19 From Respondents' (Petitioners here) Brief in the Court Below.

"In the present case the words "in any manner" and "or any other employer" in Paragraph 1 of the Board's Order go beyond the unfair labor practices alleged or found by the Board, and go beyond the scope of any order authorized by the evidence and findings in the case.

"Recognizing this, the Board makes no real attempt to justify its order on the basis of the record in this case[8], but rather seeks, at pages 24 through 26 of its brief, to justify the scope of the order by contending that it may look to past conduct of CWA for such authorization. (See par. 4, Resp. Answer, p. 35b, *infra).*

"These contentions of the Board are facetious and seek to annihilate the most basic considerations of public policy and of good faith dealing as they apply in the circumstances of this case.

"[8] At pages 27 and 28 of its brief the Board makes a casuistic attempt to rely upon the record. We have already pointed out in footnote 7, *supra,* that the arguments on page 28 are specious.

On page 27 of its brief in footnote 18, the Board cites certain cases in which it states similar sweeping orders were entered. In every one of the cases cited, with one exception, the Board made express findings that the conduct restrained was part of a "pattern of conduct" which the evidence *in that case* showed would be immediately extended to other employers and employees unless restrained. Even in these cases, the effect of the Board's order was restricted to a particular geographic area or locality.

"In the one exception, *Brooklyn Spring Corp.,* 233 F. 2d 539, enforcing 113 NLRB 815, it does not appear that the language "or any other employer" was objected to or questioned on appeal. Hence this case is no precedent.

"The facts recited on page 27 of the Board's brief bring this case squarely within the decision in *Bitner Fuel Co.,* 92 NLRB 953,, 955, enf'd. 190 F. 2d 251 (CA-4), where the Board distinguished one of the cases cited in footnote 18 in its breif in this case, saying:

"the record in that case clearly indicated that the respondent there was engaged in a planned program to apply the same technique to all nonunion mines wtihin its jurisdiction. We are not satisfied on the record before us that District 31's conduct, confined as far as the evidence shows to Bitner's operations, warrants so broad an order here.

"Here the evidence shows that the conduct restrained was confined to the operation of Ohio Consolidated; hence, an order extending to other employers is unauthorized by the Board's own rules, as well as those of the courts, quoted *supra.*"

"As support from the past, the Board goes outside the record and asserts it has previously issued cease and desist orders against CWA in two cases prohibiting 8(b) (1) (A) activity; but it carefully refrains from setting forth in its brief any facts and circumstances concerning the *unpublished* orders in the Indiana Bell and Southern Bell cases, and it fails to apprise the Court of any of the history of these cases. While it says they were bases upon "settlement stipulation," it omits to include either the settlement stipulations or the Board orders in these cases in the record, in an appendix or in its brief. Such omission in understandable and was obviously intentional, since the settlement stipulations and orders themselves, if included, defeat the Board's argument.

"We have no alternative, since the Board is seeking to rely upon *unpublished* proceedings, *not of record,* than to set out these matters in full for the consideration of the Court, though we are doubtful whether, had the Board not done so, the Board or the Court could properly take notice of matters not of public record and not shown in evidence.[9]

"Accordingly, we include the settlement stipulations and Board orders in the Indiana Bell and Southern Bell cases in this brief as Appendices B and C, respectively."

"[9] As authority for the consideration of the two previous CWA cases, the Board, in footnote 14 on page 24 of its brief, cites cases to the effect that the Board and the Court can take notice of *adjudicated and published* actions and decisions of the Board as background material to justify or authorize Board or Court action. We do not question this principle; but such principle is here inapposite. As we will hereinafter demonstrate, the two previous CWA cases are *compromise* settlements in which there was no *adjudication or finding* that CWA had engaged in any unfair labor practices.

"These cases are not published in the reports of the Board or in any other public book or document of record, such as the Federal Register. While the lack of publication alone would not prevent the Court from taking judicial notice of them, it would require that the Board should prove these matters in evidence before judicial notice could be taken."

APPENDIX D

Full Text of Unreported Settlement Stipulation and Board Order in Indiana Bell Telephone Company Case.

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
NINTH REGION

In the Matter of

COMMUNICATIONS WORKERS OF AMERICA, CIO
LOCAL No. 5710, COMMUNICATIONS WORKERS OF AMERICA, CIO
LOCAL No. 5700, COMMUNICATIONS WORKERS OF AMERICA, CIO
LOCAL No. 5701, COMMUNICATIONS WORKERS OF AMERICA, CIO
LOCAL No. 5702, COMMUNICATIONS WORKERS OF AMERICA, CIO
LOCAL No. 5704, COMMUNICATIONS WORKERS OF AMERICA, CIO
LOCAL No. 5706, COMMUNICATIONS WORKERS OF AMERICA, CIO
LOCAL No. 5707, COMMUNICATIONS WORKERS OF AMERICA, CIO
LOCAL No. 5708, COMMUNICATIONS WORKERS OF AMERICA, CIO
LOCAL No. 5709, COMMUNICATIONS WORKERS OF AMERICA, CIO
LOCAL No. 5800, COMMUNICATIONS WORKERS OF AMERICA, CIO
LOCAL No. 5801, COMMUNICATIONS WORKERS OF AMERICA, CIO
LOCAL No. 5802, COMMUNICATIONS WORKERS OF AMERICA, CIO
LOCAL No. 5807, COMMUNICATIONS WORKERS OF AMERICA, CIO
LOCAL No. 5808, COMMUNICATIONS WORKERS OF AMERICA, CIO
LOCAL No. 5810, COMMUNICATIONS WORKERS OF AMERICA, CIO
LOCAL No. 5811, COMMUNICATIONS WORKERS OF AMERICA, CIO
and
INDIANA BELL TELEPHONE COMPANY

Case No. 35-CB-123

SETTLEMENT STIPULATION

IT IS HEREBY STIPULATED AND AGREED BY AND AMONG Communications Workers of America, CIO and its above-named Locals (hereinafter sometimes referred to as Respondents), by their representatives, by Indiana Bell Telephone Company, Charging Party (hereinafter sometimes referred to as the Company), by its officers and attorneys, and by Jerome H. Brooks, Counsel for the General Counsel of the National Labor Relations Board, Ninth Region, that:

1. Upon a Charge (said Charge being numbered 35-CB-123) filed by the Company on August 18, 1953, and served on Respondents on August 21, 22, 23and 24, 1953, receipt of which Charge is hereby acknowledged by Respondents, the General

Counsel of the National Labor Relations Board, on behalf of the National Labor Relations Board (herein called the Board), by the Regional Director for the Ninth Region, acting pursuant to authority granted in Section 10 (b) of the National Labor Relations Act, 61 Stat. 136 (herein called the Act), and pursuant to Section 102.15 of the Board's Rules and Regulations, issued a Complaint and Notice of Hearing dated September 18, 1953, against Respondents. True copies of the aforesaid Charge, Affidavits of Service of said Charge, Complaint, Notice of Hearing thereon, and Orders Rescheduling Hearing were duly served by registered mail upon Respondents and the Company.

2. The Company is, and has been at all times material, a public utility engaged in the business of providing local and long distance telephone service to subscribers throughout the State of Indiana.

During the past twelve months the Company initiated, transmitted, and received long distance calls to and from points outside the State of Indiana, the charge for which exceeded $200,000. The Company is engaged in commerce within the meaning of Section 2, Subsections (6) and (7) of the Act.

3. Each of the Respondents is a labor organization within the meaning of Section 2, Subsection (5) of the Act.

4. All parties hereto expressly waive filing of Answer, Hearing, Intermediate Report of Trial Examiner, and filing of Exceptions and Oral Argument before the Board, the making of Findings of Fact or Conclusions of Law by the Board, and all further and other procedure before the Board to which Respondents may be entitled under the Act or the Rules and Regulations of the Board.

5. This Stipulation, together with the Charges, Affidavits of Service, Complaint, Notice of Hearing, and Orders Rescheduling Hearing, shall constitute the entire record herein and shall be filed with the Board.

6. Upon this Stipulation, and the record herein, as set forth in paragraph 5 above, and without any further notice of proceedings herein, the Board may enter an Order forthwith providing as follows:

Each of the Respondents, Communications Workers of America, CIO, and its affiliated Locals Nos. 5710, 5700, 5701, 5702, 5704, 5706, 5708, 5709, 5800, 5801, 5802, 5807, 5808, 5810, 5811; their officers, agents successors and assigns shall

I. Cease and desist from:

(a) Assaulting, physically harming or otherwise using force and violence against employees of the Indiana Bell Telephone Company, or threatening to do so;

(b) Picketing the premises of the Indiana Bell Telephone Company in such a manner as to deny to employees and others ingress to and egress from said premises;

(c) Physically preventing employees and others from working at the plants of the Indiana Bell Telephone Company;

(d) Engaging in or threatening to engage in reprisals against non-striking employees and others both at and away from the plants of the Indiana Bell Telephone Company;

(e) In any other manner restraining or coercing employees of the Indiana Bell Telephone Company in the exercise their rights to self-organization to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection, and to refrain from any and all such activities except to the extent that such right may be affected by an agreement requiring membership in a labor organization as a condition of employment as authorized in Section 8 (a) (3) of the the Act, as guaranteed in Section 7 of the National Labor Relations Act.

II. Take the following affirmative action in order to effectuate the policies of the National Labor Relations Act:

(a) Post immediately in conspicuous places at all of its business offices and meeting halls in Indiana, copies of the Notice to All Members attached hereto, marked "Appendix A". Appropriate copies of said Notice to All Members, to be furnished by the Re-

gional Director for the Ninth Region, which, after being duly signed, shall be posted immediately upon receipt thereof and maintained for sixty (60) consecutive days thereafter in such conspicuous places, including all places where notices to members are customarily posted. Reasonable steps shall be taken to insure that said Notices are not altered, defaced, or covered by any other material;

(b) Mail signed copies of the Notice attached hereto as "Appendix A" to the Regional Director for the Ninth Region, for posting, the Indiana Bell Telephone Company willing, at the office and places of business of the Indiana Bell Telephone Company, in places where notices to employees are customarily posted;

(c) Notify the Regional Director for the Ninth Region in writing, within ten (10) days from the date of this Order, what steps it has taken to comply herewith.

7. It is further stipulated and agreed that any United States Court of Appeals for any appropriate circuit may, upon application by the Board, enter its decree enforcing the order of the Board in the form set forth in paragraph 6 above. The Respondents waive all defenses to the entry of the decree, including the right to receive notice of the filing of an application for the entry of such decree provided that such decree is in the words and figures of the order set forth in paragraph 6 above. It is further agreed that no such application by the Board for such a decree enforcing the order of the Board will be made by the Board unless there has been a failure to comply with the order of the Board as stated in paragraph 6 above. Any finding that there has been a failure to comply shall be made by the Regional Director upon his administrative determination which shall be final and binding.

8. This Settlement Stipulation contains the entire agreement between the parties, there being no agreement of any kind, verbal or otherwise, which varies, alters, or adds to this Stipulation, except that it is understood that the signing of this Stipulation by Respondents does not constitute an admission by them that they have violated the Act.

9. This Settlement Stipulation is subject to the approval of the National Labor Relations Board, and is of no force and effect unless and until the Board has approved this Stipulation. Upon the Board's approval, each of the Respondents will immediately comply with the provisions of the Order as set forth in paragraph 6 above.

Signed this.....day of May, 1954, at Washington, D. C.

COMMUNICATIONS WORKERS OF AMERICA, CIO, AND ITS AFFILIATED LOCALS NOS. 5710, 5700, 5701, 5702, 5704, 5706, 5708, 5709, 5800, 5801, 5802, 5807, 5808, 5810, 5811

By_____
Attorney

Signed this 27th day of May, 1954, at Washington, D. C.

INDIANA BELL TELELPHONE COMPANY

By_____
Attorney

Signed this 18th day of May, 1954, at Indianapolis, Ind.

Jerome H. Brooks, Counsel for General Counsel
National Labor Relations Board, Ninth Region
1200 Ingalls Buildings, 6 East Fourth Street
Cincinnati 2, Ohio.

"APPENDIX A"

NOTICE TO ALL MEMBERS

PURSUANT TO A DECISION AND ORDER

of the National Labor Relations Board, based upon a Stipulation, and in order to effectuate the policies of the National Labor Relations Act, we hereby notify our members that:

WE WILL NOT assault, physically harm or otherwise use force and violence against employees of Indiana Bell Telephone Company, or threaten to do so.

WE WILL NOT picket the premises of Indiana Bell Telephone Company in such a manner as to deny to employees and others ingress to and egress from said premises.

WE WILL NOT physically prevent employees and others from working at the plants of Indiana Bell Telephone Company.

WE WILL NOT engage in [illegible]en to engage in reprisals against non-striking [illegible]s or others either at or away from the plants of [illegible]iana Bell Telephone Company.

WE WILL NOT in any other manner restrain or coerce employees of Indiana Bell Telephone Company in the exercise of their rights to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection, and to refrain from any and all such activities except to the extent that such right may be affected by an agreement requiring membership in a labor organization as a condition of employment as authorized in Section 8 (a) (3) of the Act.

Name of the labor organization posting the notice to be posted here

_____

(Labor Organization)

Dated_____ By_____

(Representative) (Title)

This notice must remain posted for 60 days from the date hereof, and must not be altered, defaced, or covered by any other materail.

Indianapolis Indiana
DS-349

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD

COMMUNICATIONS WORKERS OF AMERICA, CIO
LOCAL NO. 5710, COMMUNICATIONS WORKERS OF AMERICA, CIO
LOCAL NO. 5700, COMMUNICATIONS WORKERS OF AMERICA, CIO
LOCAL NO. 5701, COMMUNICATIONS WORKERS OF AMERICA, CIO
LOCAL NO. 5702, COMMUNICATIONS WORKERS OF AMERICA, CIO
LOCAL NO. 5704, COMMUNICATIONS WORKERS OF AMERICA, CIO
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LOCAL NO. 5708, COMMUNICATIONS WORKERS OF AMERICA, CIO
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LOCAL NO. 5802, COMMUNICATIONS WORKERS OF AMERICA, CIO
LOCAL NO. 5807, COMMUNICATIONS WORKERS OF AMERICA, CIO
LOCAL NO. 5808, COMMUNICATIONS WORKERS OF AMERICA, CIO
LOCAL NO. 5810, COMMUNICATIONS WORKERS OF AMERICA, CIO
LOCAL NO. 5811, COMMUNICATIONS WORKERS OF AMERICA, CIO
and
INDIANA BELL TELEPHONE COMPANY

Case No. 35-CB-123

DECISION AND ORDER

Statement of the Case

On May 27, 1954, Communications Workers of America, CIO, and its affiliated Locals Nos. 5710, 5700, 5701, 5702, 5704, 5706, 5707, 5708, 5709, 5800, 5801, 5802, 5807, 5808, 5810, 5811, (herein called Respondents) Indiana Bell Telephone Company, the Charging Party, (herein called the Company) ; and Jerome H. Brooks, counsel for the General Counsel, on behalf of the National Labor Relations Board, (herein called the Board), entered into a Settlement Stipulation, subject to approval of the Board, providing for the entry of a consent order by the Board, and a consent decree by any appropriate United States Court of Appeals. The parties waived all further and other procedure before the Board to which Respondents may be entitled under the Act, and the Rules and Regulations of the Board, and the Respondents waived their right to contest the entry of a consent decree or to receive further notice of the application therefor.

The aforesaid Settlement Stipulation is hereby approved and made a part of the record herein, and in accordance with Section 102.51 of the National Labor Relations Board Rules and Regulations—Series 6, as amended, the proceeding is hereby transferred to and continued before the Board for the entry of a Decision and Order pursuant to the provisions of the said Settlement Stipulation.

Upon the basis of the aforesaid Settlement Stipulation and the entire record in the case, the Board makes the following:

Findings of Fact

1. The business of the Company

Indiana Bell Telephone Company is a public utility engaged in the business of providing local and long distance telephone service to subscribers throughout the State of Indiana.

During the past twelve months, the Company initiated, transmitted, and received long distance calls to and from points outside the State of Indiana, the charge for which exceeded $200,000. The Company admits, and we find that it is engaged in commerce within the meaning of the Act.

2. The organizations involved

Each of the Respondents is a labor organization within the meaning of Section 2 (5) of the Act.

ORDER

Upon the basis of the above findings of fact, the Settlement Stipulation and the entire record in the case, and pursuant to Section 10 (c) of the National Labor Relations Act, as amended, the National Labor Relations Board hereby orders that each of the Respondents, Communications Workers of America, CIO, and its affiliated Locals Nos. 5710, 5700, 5701, 5702, 5704, 5706, 5707, 5708, 5709, 5800, 5801, 5802, 5807, 5808, 5810, 5811; their officers, agents, successors and assigns shall:

I. Cease and desist from:

(a) Assaulting, physically harming or otherwise using force and violence against employees of the Indiana Bell Telephone Company, or threatening to do so;

(b) Picketing the premises of the Indiana Bell Telephone Company in such a manner as to deny to employees and others ingress and egress from said premises;

(c) Physically preventing employees and others from working at the plants of the Indiana Bell Telephone Company;

(d) Engaging in or threatening to engage in reprisals against non-striking employees and others both at and away from the plants of the Indiana Bell Telephone Company;

(e) In any other manner restraining or coercing employees of the Indiana Bell Telephone Company in the exercise of their rights to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection, and to refrain from any and all such activities except to the extent that such right may be affected by an agreement requiring membership in a labor organization as a condition of employment as authorized in Section 8 (a) (3) of the Act, as guaranteed in Section 7 of the National Labor Relations Act.

II. Take the following affirmative action which the Board finds will effectuate the policies of the Act:

(a) Post immediately in conspicuous places at all of its business offices and meeting halls in Indiana, and on all bulletin boards on the premises of Indiana Bell Telephone Company used by it, copies of the Notice to All Members attached hereto, marked "Appendix A." Appropriate copies of said Notice to All Members, to be furnished by its Regional Director for the Ninth Region shall, after being duly signed, be posted immediately upon receipt thereof and maintained for sixty (60) consecutive days thereafter in such conspicuous places, including all places where notices to members are customarily posted. Reasonable steps shall be taken to insure that said Notices are not altered, defaced, or covered by any other material;

(b) Mail signed copies of the Notices attached hereto as "Appendix A" to the Regional Director for the Ninth Region, for posting, the Indiana Bell Telephone Company willing, at the office and places of business of the Indiana Bell Telephone Company, in places where notices to employees are customarily posted:

(c) Notify the Regional Director for the Ninth Region in writing, within ten (10) days from the date of this Order, what steps the Respondents have taken to comply herewith.

Dated Washington, D. C., June 21, 1954.

Guy Farmer	Chairman
Abe Murdock	Member
Ivar H. Peterson	Member
Philip Ray Rogers	Member
Albert C. Beeson	Member

NATIONAL LABOR RELATIONS BOARD

(SEAL)

"APPENDIX A"

NOTICE TO ALL MEMBERS

PURSUANT TO A DECISION AND ORDER

of the National Labor Relations Board, based upon a Stipulation, and in order to effectuate the policies of the National Labor Relations Act, we hereby notify our members that:

WE WILL NOT assault, physically harm, or otherwise use force and violence against employees of Indiana Bell Telephone Company, or threaten to do so.

WE WILL NOT picket the premises of Indiana Bell Telephone Company in such a manner as to deny to employees and others ingress to and egress from said premises.

WE WILL NOT physically prevent employees and others from working at the plants of Indiana Bell Telephone Company.

WE WILL NOT engage in or threaten to engage in reprisals against non-striking employees or others either at or away from the plants of Indiana Bell Telephone Company.

WE WILL NOT in any other manner restrain or coerce employees of Indiana Bell Telephone Company in the exercise of their right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection, and to refrain from any and all such activities except to the extent that such right may be affected by an agreement requiring membership in a labor organization as a condition of employment as authorized in Section 8 (a) (3) of the Act.

_____

(Labor Organization)

Dated_____ By_____

(Representative) Title

This notice must remain posted for 60 days from the date hereof, and must not be altered, defaced, or covered by any other material.

APPENDIX E

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD

In the Matter of

COMMUNICATIONS WORKERS OF AMERICA, AFL-CIO
Case No. 10-CB-291

LOCAL No. 3224, COMMUNICATIONS WORKERS OF AMERICA
Case No. 10-CB-329

LOCAL No. 3902, COMMUNICATIONS WORKERS OF AMERICA
Case No. 10-CB-331

LOCAL No. 3904, COMMUNICATIONS WORKERS OF AMERICA
Case No. 10-CB-333

LOCAL No. 3905, COMMUNICATIONS WORKERS OF AMERICA
Case No. 10-CB-334

LOCAL No. 3908, COMMUNICATIONS WORKERS OF AMERICA
Case No. 10-CB-337

LOCAL No. 3911, COMMUNICATIONS WORKERS OF AMERICA
Case No. 10-CB-340

LOCAL No. 3912, COMMUNICATIONS WORKERS OF AMERICA
Case No. 10-CB-341

LOCAL No. 3109, COMMUNICATIONS WORKERS OF AMERICA
Case No. 10-CB-349

LOCAL No. 3112, COMMUNICATIONS WORKERS OF AMERICA
Case No. 10-CB-350

LOCAL No. 3114, COMMUNICATIONS WORKERS OF AMERICA
Case No. 10-CB-351

LOCAL No. 3802, COMMUNICATIONS WORKERS OF AMERICA
Case No. 10-CB-352

LOCAL No. 3804, COMMUNICATIONS WORKERS OF AMERICA
Case No. 10-CB-354

LOCAL No. 3805, COMMUNICATIONS WORKERS OF AMERICA
Case No. 10-CB-355

LOCAL No. 3808, COMMUNICATIONS WORKERS OF AMERICA
Case No. 10-CB-357

LOCAL No. 3303, COMMUNICATIONS WORKERS OF AMERICA
Case No. 10-CB-359

LOCAL No. 3304, COMMUNICATIONS WORKERS OF AMERICA
Case No. 10-CB-360

LOCAL No. 3313, COMMUNICATIONS WORKERS OF AMERICA
Case No. 10-CB-365

LOCAL No. 3314, COMMUNICATIONS WORKERS OF AMERICA
Case No. 10-CB-366

LOCAL No. 3315, COMMUNICATIONS WORKERS OF AMERICA
Case No. 10-CB-367

LOCAL No. 3317, COMMUNICATIONS WORKERS OF AMERICA
Case No. 10-CB-369

LOCAL No. 3321, COMMUNICATIONS WORKERS OF AMERICA
Case No. 10-CB-371

LOCAL No. 3403, COMMUNICATIONS WORKERS OF AMERICA
Case No. 10-CB-373

LOCAL NO. 3406, COMMUNICATIONS WORKERS OF AMERICA
Case No. 10-CB-375
LOCAL NO. 3407, COMMUNICATIONS WORKERS OF AMERICA
Case No. 10-CB-376
LOCAL NO. 3601, COMMUNICATIONS WORKERS OF AMERICA
Case No. 10-CB-382
LOCAL NO. 3504, COMMUNICATIONS WORKERS OF AMERICA
Case No. 10-CB-411
LOCAL NO. 3509, COMMUNICATIONS WORKERS OF AMERICA
Case No. 10-CB-416
and
SOUTHERN BELL TELEPHONE AND TELEGRAPH COMPANY

SETTLEMENT STIPULATION

IT IS HEREBY STIPULATED AND AGREED BY AND AMONG Communications Workers of America, AFL-CIO, and the above-named Locals of Communications Workers of America, AFL-CIO (hereinafter sometimes referred to as Respondent CWA and Respondent Locals, or, collectively, as the Respondents) by their attorney, by Southern Bell Telephone and Telegraph Company, the Charging Party herein (hereinafter sometimes referred to as Southern) by its attorneys and by Frank E. Hamilton, Jr., Counsel for the General Counsel of the National Labor Relations Board, Tenth Region, that:

1. Upon a Charge filed by Southern on May 11, 1955, and served on Respondent CWA on May 12 and 13, 1955, the said Charge being docketed Case No. 10-CB-291, and Amended Charge in Case No. 10-CB-291 filed by Southern on May 23, 1956, and served on Respondent CWA on May 25, 1956, receipt of which Charge and Amended Charge is hereby acknowledged by Respondent CWA, and upon separate Charges filed by Southern, said Charges being docketed with the case numbers shown for the Respondent Locals as listed above and served on the Respondent Locals during August, 1955, receipt of which Charges are hereby acknowledged by each of the Respondent Locals, the General Counsel of the National Labor Relations Board, on behalf of the National Labor Relations Board (herein called the Board), by the Regional Director for the Tenth Region, acting pursuant to authority granted in Section 10 (b) of the National Labor Relations Act, 61 Stat. 136 (herein called the Act, and pursuant to Section 102.15 of the Board's Rules and Regulations, issued a separate Complaint and Notice of

Hearing in each of the hereinabove captioned cases which were dated May 31, 1956, against each of the Respondents. Thereafter, on July 2, 1956, the Regional Director for the Tenth Regional Office of the Board, pursuant to Section 102.33 of the Board's Rules and Regulations, issued an Order Consolidating Cases. True copies of the aforesaid Charges, Amended Charge, Complaints, Notices of Hearing and Order Consolidating Cases were duly served by registered mail upon Southern and each of the Respondents and receipt of such documents is hereby acknowledged by the Respondents.

On July 10, 1956, the hearing in each of the cases was opened before a Trial Examiner of the National Labor Relations Board and, thereafter, on December 13, 1956, the Trial Examiner entered an order severing all other cases named in the Order Consolidating Cases from the hereinabove captioned cases.

2. Southern is, and at all times material herein has been, a New York corporation with principal offices in Atlanta, Georgia. At all times material herein Southern has been continuously engaged in the business of furnishing toll and local telephone and related services in each of the States of Georgia, Alabama, Florida, Tennessee, Kentucky, Louisiana, North Carolina, South Carolina and Mississippi, and has maintained and maintains places of business and transmission facilities at various points in each of the aforesaid states.

Southern receives more than $10,000,000 annually for interstate telephone service. Southern is engaged in commerce within the meaning of Section 2, Subsections (6) and (7) of the Act.

3. Each of the Respondents is a labor organization as defined in Section 2, Subsection (5) of the Act.

4. All parties hereto expressly waive further hearing, Intermediate Report of Trial Examiner, the filing of Exceptions and Oral Argument before the Board, the making of Findings of Fact or Conclusions of Law by the Board, and all further and other procedure before the board to which the Respondents may be entitled under the Act or the Rules and Regulations of the Board.

5. This Stipulation, together with the Charges, Amended Charges, Complaints, Notices of Hearing, Order Consolidating

Cases, the Respondents' Answers and Order Severing Cases shall constitute the entire record herein and shall be filed with the Trial Examiner for transmission to the Board.

6. Upon this Stipulation, and the record herein as set forth in paragraph 5 above, and without any further notice of proceedings herein, the Board may enter an Order forthwith providing as follows:

The Respondents, Communications Workers of America, AFL-CIO; Local 3224, Communications Workers of America; Local 3902, Communications Workers of America; Local 3904, Communications Workers of America; Local 3905, Communications Workers of America; Local 3908, Communications Workers of America; Local 3911,Communications Workers of America; Local 3912, Communications Workers of America; Local 3109, Communications Workers of America; Local 3112, Communications Workers of America; Local 3114, Communications Workers of America; Local 3802, Communications Workers of America; Local 3804, Communications Workers of America; Local 3805, Communications Workers of America; Local 3808, Communications Workers of America; Local 3303, Communications Workers of America; Local 3304, Communications Workers of America; Local 3313, Communications Workers of America; Local 3314, Communications Workers of America; Local 3315, Communications Workers of America; Local 3317, Communications Workers of America; Local 3321, Communications Workers of America; Local 3403, Communicaitons Workers of America; Local 3406, Communications Workers of America; Local 3407, Communications Workers of America; Local 3501, Communications Workers of America; Local 3504, Communications Workers of America; Local 3509, Communications Workers of America; their officers, agents, successors and assigns shall

1. Cease and desist from:

   (a) Assaulting, physically harming or otherwise using force and violence against any employees of or applicants for employment by Southern Bell Telephone and Telegraph Company, or others, or attempting or threatening to do so;

(b) Picketing the premises of Southern Bell Telephone and Telegraph Company in such a manner as to deny to employees and others free ingress to or egress from said premises;

(c) Making threatening telephone calls to employees;

(d) Following employees and others from the premises of Southern Bell Telephone and Telegraph Company in order to restrain or coerce them;

(e) Throwing objects at, against, or toward employees or others entering or leaving the premises of Southern Bell Telephone and Telegraph Company, or at or against such premises in which employees are working;

(f) Restraining or coercing employees of Southern Bell Telephone and Telegraph Company by damaging or destroying, or attempting to damage or destroy, their property or the property of Southern Bell Telephone and Telegraph Company;

(g) In any other manner restraining or coercing the employees of Southern Bell Telephone and Telegraph Company in the exercise of their right guaranteed in Section 7 of the National Labor Relations Act to refrain from engaging in concerted activities for the purpose of collective bargaining or other mutual aid or protection except to the extent that such right may be affected by an agreement requiring membership as authorized in Section 8(a) (3) of the Act.

II. Take the following affirmative action in order to effectuate the policies of the National Labor Relations Act.

(a) Post immediately in conspicuous places at all of their business offices and meeting halls in the States of Georgia, Alabama, Florida, Tennessee, Kentucky, Louisiana, North Carolina, South Carolina and Mississippi, and on all bulletin boards on the premises of Southern Bell Telephone and Telegraph Company used by them, copies of the Notice to All Members attached hereto, marked "Appendix A." Appropriate copies of said Notice to All Members, to

be furnished by the Regional Director for the Tenth Region, shall, after being duly signed, be posted immediately upon receipt thereof and maintained for sixty (60) consecutive days thereafter in such conspicuous places, including all places where notices to members are customarily posted. Reasonable steps shall be taken to insure that said Notices are not altered, defaced, or covered by any other material;

(b) Mail copies of the Notice attached hereto as "Appendix A" to the Regional Director for the Tenth Region, for posting, the Southern Bell Telephone and Telegraph Company willing, at the office and place of business of Southern Bell Telephone and Telegraph Company, in places where notices to employees are customarily posted;

(c) Notify the Regional Director for the Tenth Region in writing, within ten (10) days from the date of this Order, what steps it has taken to comply herewith.

7. It is further stipulated and agreed that whenever, in the opinion of the Regional Director for the Board's Tenth Region, the Respondents or any of them have violated Section 8(b) (1) (A) of the Act as to the employees of Southern Bell Telephone and Telegraph Company, the Board may apply to any appropriate United States Court of Appeals for enforcement of its Order herein, with or without notice to the Respondents and the Respondents hereby consent that a Decree enforcing the Board's said Order herein may be entered by such court pro confesso. The Respondents hereby waive all defenses to the entry of such Decree, including alleged compliance with the Board's Order and its right to receive notice of the filing of an application for the entry of such Decree, provided that same is in the language of the Order set forth in paragraph 6 above. The Respondents shall be required to comply with the affirmative provisions of said Order after entry of the Decree only to the extent that they have not already done so. Upon the Board's application as herein provided for enforcement of its Order and pending the entry of such a Decree of enforcement, the Respondents hereby consent to the immediate entry of a

temporary restraining order under Section 10(e) of the Act restraining them from violating any of the provisions of the Board's said Order herein or in any other manner violating Section 8(b) (1) (A) of theAct as to the employees of Southern Bell Telephone and Telegraph Company.

8. This Settlement Stipulation contains the entire agreement between the parties, there being no agreement of any kind, verbal or otherwise, which varies, alters, or adds to this Stipulation, except that it is understood that the signing of this Stipulation by the Respondents does not constitute an admission by them that they or any of them have violated the Act.

9. This Settlement Stipulation is subject to the approval of the National Labor Relations Board, and is of no force and effect unless and until the Board has approved this Stipulation. Upon the Board's approval, each of the Respondents will immediately comply with the provisions of the Order as set forth in paragraph 6 above.

Signed this 12th day of December, 1956, at Atlanta, Georgia.

COMMUNICATIONS WORKERS OF AMERICA, AFL-CIO
LOCAL 3224, COMMUNICATIONS WORKERS OF AMERICA
LOCAL 3902, COMMUNICATIONS WORKERS OF AMERICA
LOCAL 3904, COMMUNICATIONS WORKERS OF AMERICA
LOCAL 3905, COMMUNICATIONS WORKERS OF AMERICA
LOCAL 3908, COMMUNICATIONS WORKERS OF AMERICA
LOCAL 3911, COMMUNICATIONS WORKERS OF AMERICA
LOCAL 3912, COMMUNICATIONS WORKERS OF AMERICA
LOCAL 3109, COMMUNICATIONS WORKERS OF AMERICA
LOCAL 3112, COMMUNICATIONS WORKERS OF AMERICA
LOCAL 3114, COMMUNICATIONS WORKERS OF AMERICA
LOCAL 3802, COMMUNICATIONS WORKERS OF AMERICA
LOCAL 3804, COMMUNICATIONS WORKERS OF AMERICA
LOCAL 3805, COMMUNICATIONS WORKERS OF AMERICA
LOCAL 3808, COMMUNICATIONS WORKERS OF AMERICA
LOCAL 3303, COMMUNICATIONS WORKERS OF AMERICA
LOCAL 3304, COMMUNICATIONS WORKERS OF AMERICA
LOCAL 3313, COMMUNICATIONS WORKERS OF AMERICA
LOCAL 3314, COMMUNICATIONS WORKERS OF AMERICA
LOCAL 3315, COMMUNICATIONS WORKERS OF AMERICA
LOCAL 3317, COMMUNICATIONS WORKERS OF AMERICA
LOCAL 3321, COMMUNICATIONS WORKERS OF AMERICA
LOCAL 3403, COMMUNICATIONS WORKERS OF AMERICA

LOCAL 3406, COMMUNICATIONS WORKERS OF AMERICA
LOCAL 3407, COMMUNICATIONS WORKERS OF AMERICA
LOCAL 3601, COMMUNICATIONS WORKERS OF AMERICA
LOCAL 3504, COMMUNICATIONS WORKERS OF AMERICA
LOCAL 3509, COMMUNICATIONS WORKERS OF AMERICA

By Thomas S. Adair, Esquire
Adair & Goldthwaite
203 Mark Building
Atlanta, Georgia
ATTORNEYS FOR EACH OF THE RESPONDENTS

Signed this 12th day of December, 1956, at Atlanta, Ga.

SOUTHERN BELL TELEPHONE AND TELEGRAPH COMPANY
John C. McCree, Esquire
1245 Hurt Building
Atlanta, Georgia
William M. Pate, Esquire
1421 Healey Building
Atlanta, Georgia
ATTORNEYS FOR SOUTHERN BELL TELEPHONE AND TELEGRAPH COMPANY

Signed this 12th day of December, 1956, at Atlanta, Ga.

Frank E. Hamilton, Jr.
Counsel for the General Counsel
National Labor Relations Board
Tenth Region
National Labor Relations Board, Tenth Region
528 Peachtree-Seventh Building
Atlanta, Georgia

NOTICE

"APPENDIX A"

TO ALL MEMBERS OF (NAME OF APPROPRIATE LABOR ORGANIZATION AND TO ALL EMPLOYEES OF SOUTHERN BELL TELEPHONE AND TELEGRAPH COMPANY)

Pursuant to a Settlement Stipulation providing for an order by the National Labor Relations Board and in order to effectuate the policies of the National Labor Relations Act, you are hereby notified that:

WE WILL NOT assault, physically harm or otherwise use force and violence against any employees of or applicants for employment by Southern Bell Telephone and Telegraph Company, or others, or attempt or threaten to do so;

WE WILL NOT picket the premises of Southern Bell Telephone and Telegraph Company in such a manner as to deny to employees and others free ingress to or egress from said premises;

WE WILL NOT make threatening telephone calls to employees:

WE WILL NOT follow employees and others from the premises of Southern Bell Telephone and Telegraph Company in order to restrain or coerce them;

WE WILL NOT throw objects at, against or toward employees or others entering or leaving the premises of Southern Bell Telephone and Telegraph Company or at or against such premises in which employees are working;

WE WILL NOT restrain or coerce employees of Southern Bell Telephone and Telegraph Company by damaging or destroying, or attempting to damage or destroy, their property or the property of Southern Bell Telephone and Telegraph Company;

WE WILL NOT in any other manner restrain or coerce the employees of Southern Bell Telephone and Telegraph Company in the exercise of their right guaranteed in Section 7 of the National Labor Relations Act to refrain from

engaging in concerted activities for the purpose of collective bargaining or other mutual aid or protection except to the extent that such right may be affected by an agreement requiring membership in a labor organization as a condition of employment as authorized in Section 8(a) (3) of the Act.

Name of Labor Organization Signing Notice
(Employer or Labor Organization)

Dated_____ By_____
(Representative) Title

This notice must remain posted for 60 days from the date hereof, and must not be altered, defaced, or covered by any other material.

Atlanta, Georgia
DS-538

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD

COMMUNICATIONS WORKERS OF AMERICA, AFL-CIO
Case No. 10-CB-291

LOCAL No. 3224, COMMUNICATIONS WORKERS OF AMERICA.....
Case No. 10-CB-329

LOCAL No. 3902, COMMUNICATIONS WORKERS OF AMERICA
Case No. 10-CB-331

LOCAL No. 3904, COMMUNICATIONS WORKERS OF AMERICA
Case No. 10-CB-333

LOCAL No. 3905, COMMUNICATIONS WORKERS OF AMERICA
Case No. 10-CB-334

LOCAL No. 3908, COMMUNICATIONS WORKERS OF AMERICA
Case No. 10-CB-337

LOCAL No. 3911, COMMUNICATIONS WORKERS OF AMERICA
Case No. 10-CB-340

LOCAL No. 3912, COMMUNICATIONS WORKERS OF AMERICA
Case No. 10-CB-341

LOCAL No. 3109, COMMUNICATIONS WORKERS OF AMERICA
Case No. 10-CB-349

LOCAL No. 3112, COMMUNICATIONS WORKERS OF AMERICA
Case No. 10-CB-350

LOCAL No. 3114, COMMUNICATIONS WORKERS OF AMERICA
Case No. 10-CB-351

LOCAL No. 3802, COMMUNICATIONS WORKERS OF AMERICA
Case No. 10-CB-352

LOCAL No. 3804, COMMUNICATIONS WORKERS OF AMERICA
Case No. 10-CB-354

LOCAL No. 3805, COMMUNICATIONS WORKERS OF AMERICA
Case No. 10-CB-355

LOCAL No. 3808, COMMUNICATIONS WORKERS OF AMERICA
Case No. 10-CB-357

LOCAL No. 3303, COMMUNICATIONS WORKERS OF AMERICA
Case No. 10-CB-359

LOCAL No. 3304, COMMUNICATIONS WORKERS OF AMERICA
Case No. 10-CB-360

LOCAL No. 3313, COMMUNICATIONS WORKERS OF AMERICA
Case No. 10-CB-365

LOCAL No. 3314, COMMUNICATIONS WORKERS OF AMERICA
Case No. 10-CB-366

LOCAL No. 3315, COMMUNICATIONS WORKERS OF AMERICA
Case No. 10-CB-367

LOCAL No. 3317, COMMUNICATIONS WORKERS OF AMERICA
Case No. 10-CB-369

LOCAL No. 3321, COMMUNICATIONS WORKERS OF AMERICA
Case No. 10-CB-371

LOCAL No. 3403, COMMUNICATIONS WORKERS OF AMERICA
Case No. 10-CB-373

LOCAL NO. 3406, COMMUNICATIONS WORKERS OF AMERICA
Case No. 10-CB-375
LOCAL NO. 3407, COMMUNICATIONS WORKERS OF AMERICA
Case No. 10-CB-376
LOCAL NO. 3601, COMMUNICATIONS WORKERS OF AMERICA
Case No. 10-CB-382
LOCAL NO. 3504, COMMUNICATIONS WORKERS OF AMERICA
Case No. 10-CB-411
LOCAL NO. 3509, COMMUNICATIONS WORKERS OF AMERICA
Case No. 10-CB-416

and

SOUTHERN BELL TELEPHONE AND TELEGRAPH COMPANY

DECISION AND ORDER

Statement of the Case

On December 12, 1956, Communications Workers of America, AFL-CIO, and the above-named Locals of Communications Workers of America, AFL-CIO, herein referred to as the Respondents; Southern Bell Telephone and Telegraph Company, herein referred to as Southern; and Frank E. Hamilton, Jr., counsel for the General Counsel on behalf of the National Labor Relations Board, herein called the Board, entered into a Settlement Stipulation, subject to approval of the Board, providing for the entry of a consent order by the Board, and a consent decree by any appropriate United States Court of Appeals. The parties waived all further and other procedure before the Board to which the Respondents may be entitled under the Act, and the Rules and Regulations of the Board, and the Respondents waived their right to contest the entry of a consent decree, or to receive further notice of the application therefor.[1]

The aforesaid Settlement Stipulation is hereby approved and made a part of the record herein and the proceeding is hereby transferred to and continued before the Board for the entry

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[1] It was stipulated and agreed that whenever, in the opinion of the Regional Director for the Board's Tenth Region, the Respondents or any of them have violated any of the provisions of the Board's Order herein, or have in any manner violated Section 8 (b) (1) (A) of the Act as to the employees of Southern Bell Telephone and Telegraph Company, the Board may apply to any appropriate United States Court of Appeals for enforcement of its Order herein, with or without notice to the Respondents and the Respondents consented that a Decree enforcing the Board's said Order herein may be entered by such court pro confesso.

of a Decision and Order pursuant to the provisions of the said Settlement Stipulation.

Upon the basis of the aforesaid Settlement Stipulation and the entire record in the cases, the Board makes the following:

Findings of Fact

1. The business of Southern Bell Telephone and Telegraph Company

Southern Bell Telephone and Telegraph Company, a New York Corporation, with its principal offices in Atlanta, Georgia, is engaged in the business of furnishing toll and local telephone and related services in each of the States of Georgia, Alabama, Florida, Tennessee, Kentucky, Louisiana, North Carolina, South Carolina and Mississippi, and has maintained and maintains places of business and transmission facilities at various points in each of the aforesaid states. Southern receives more than $10,000,000 annually for interstate telephone service. Southern admits, and we find, that it is engaged in commerce within the meaning of the Act.

2. The labor organizations involved

Communications Workers of America, AFL-CIO and the above-named Locals are labor organizations within the meaning of Section 2 (5) of the Act.

ORDER

Upon the basis of the above finding of fact, the Settlement Stipulation, and the entire record in the cases, and pursuant, to Section 10 (c) of the National Labor Relations Act, the National Labor Relations Board hereby orders that the Respondents Communications Workers of America, AFL-CIO; Local 3224, Communications Workers of America; Local 3902, Communications Workers of America; Local 3904, Communications Workers of America; Local 3905, Communications Workers of America; Local 3908, Communications Workers of America; Local 3911, Communications Workers of America; Local 3912, Communications Workers of America; Local 3109, Communications Workers of America; Local 3112, Communications Workers of America; Local 3114, Communications Workers of America; Local 3802, Communications Workers of America; Local 3804, Communications Workers of America; Local 3805, Communications Workers of America; Local 3808, Communi-

cations Workers of America; Local 3303, Communications Workers of America; Local 3304, Communications Workers of America; Local 3313, Communications Workers of America; Local 3314, Communications Workers of America; Local 3315, Communications Workers of America; Local 3317, Communications Workers of America; Local 3321, Communications Workers of America; Local 3403, Communications Workers of America; Local 3406, Communications Workers of America; Local 3407, Communications Workers of America; Local 3601, Communications Workers of America; Local 3504, Communications Workers of America; Local 3509, Communications Workers of America; their officers, agents, successors and assigns shall:

I. Cease and desist from:

(a) Assaulting, physically harming or otherwise using force and violence against any employees of or applicants for employment by Southern Bell Telephone and Telegraph Company, or others, or attempting or threatening to do so;

(b) Picketing the premises of Southern Bell Telephone and Telegraph Company in such a manner as to deny to employees and others free ingress to or egress from said premises;

(c) Making threatening telephone calls to employees;

(d) Following employees and other from the premises of Southern Bell Telephone and Telegraph Company, or at or against such premises in which employees are working;

(f) Restraining or coercing employees of Southern Bell Telephone and Telegraph Company by damaging or destroying, or attempting to damage or destroy, their property or the property of Southern Bell Telegraph and Telephone Company;

(g) In any other manner restraining or coercing the employees of Southern Bell Telephone and Telegraph Company in the exercise of their right guaranteed in Section 7 of the National Labor Relations Act to refrain from engaging in concerted activities for the purpose of collective bargaining or other mutual aid or protection except to

the extent that such right may be affected by an agreement requiring membership in a labor organization as a condition of employment as authorized in Section 8 (a) (3) of the Act.

II. Take the following affirmative action which the Board finds will effectuate the policies of the Act:

(a) Post immediately in conspicuous places at all of their business offices and meeting halls in the States of Georgia, Alabama, Florida, Tennessee, Kentucky, Louisiana, North Carolina, South Carolina and Mississippi and on all bulletin boards on the premises of Southern Bell Telephone and Telegraph Company used by them, copies of the Notice to All Members attached hereto, marked "Appendix A". Appropriate copies of said Notice to All Members, to be furnished by the Regional Director for the Tenth Region, shall, after being duly signed, be posted immediately upon receipt thereof and maintained for sixty (60) consecutive days thereafter in such conspicuous places, including all places where notices to members are customarily posted. Reasonable steps shall be taken to insure that said Notices are not altered, defaced, or covered by any other material;

(b) Mail copies of the Notice attached hereto as "Appendix A" to the Regional Director for the Tenth Region, for posting, the Southern Bell Telephone and Telegraph Company willing, at the office and place of business of Southern Bell Telephone and Telegraph Company, in places where notices to employees are customarily posted;

(c) Notify the Regional Director for the Tenth Region in writing, within ten (10) days from the date of this Order, what steps the Respondents have taken to comply here with.

Dated, Washington, D. C., Jan. 28, 1957.

Boyd Leedom,	Chairman
Abe Murdock,	Member
Philip Ray Rogers,	Member
Stephen S. Bean,	Member

NATIONAL LABOR RELATIONS BOARD

(SEAL)

"APPENDIX A"

NOTICE
TO ALL MEMBERS OF

AND TO ALL EMPLOYEES OF SOUTHERN BELL TELEPHONE AND TELEGRAPH COMPANY

Pursuant to a Settlement Stipulation providing for an order by the National Labor Relations Board and in order to effectuate the policies of the National Labor Relations Act, you are hereby notified that:

WE WILL NOT assault, physically harm or otherwise use force and violence against any employees of or applicants for employment by Southern Bell Telephone and Telegraph Company, or others, or attempt or threaten to do so;

WE WILL NOT picket the premises of Southern Bell Telephone and Telegraph Company in such a manner as to deny to employees and others free ingress to or egress from said premises;

WE WILL NOT make threatening telephone calls to employees;

WE WILL NOT follow employees and others from the premises of Southern Bell Telephone and Telegraph Company in order to restrain or coerce them;

WE WILL NOT throw objects at, against or toward employees or others entering or leaving the premises of Southern Bell Telephone and Telegraph Company or at or against such premises in which employees are working;

WE WILL NOT restrain or coerce employees of Southern Bell Telephone and Telegraph Company by damaging or destroying, or attempting to damage or destroy, their property or the property of Southern Bell Telephone and Telegraph Company;

WE WILL NOT in any other manner restrain or coerce the employees of Southern Bell Telephone and Telegraph Company in the exercise of their right guaranteed in Sec-

tion 7 of the National Labor Relations Act to refrain from engaging in concerted activities for the purpose of collective bargaining or other mutual aid or protection except to the extent that such right may be affected by an agreement requiring membership in a labor organization as a condition of employment as authorized in Section 8 (a) (3) of the Act.

Name of Labor Organization Signing Notice
(Employer or Labor Organization)

Dated_____ By_____
(Representative) Title

This notice must remain posted for 60 days from the date hereof, and must not be altered, defaced, or covered by any other material.

APPENDIX F

OPINION AND ORDER DENYING REHEARING IN THE COURT BELOW

No. 13,729

Decided May 14, 1959

Before SIMONS and ALLEN, Circuit Judges; CHOATE, District Judge.

PER CURIAM. This cause came on to be heard upon petition of the National Labor Relations Board, pursuant to Section 10(e) of the National Labor Relations Act as amended, 29 U. S. C. Sec. 151 et seq. for enforcement of its order against respondents dated May 1, 1958.

An examination of the record in this case, and the consideration of the briefs and the oral argument convinces us that there is substantial evidence to support the Board's finding that the respondents violated Section 8 (b) (1) (A) of the National Labor Relations Act, 29 U. S. C. Sec. 158, and that the Board's procedure was valid and proper.

Respondents complain that paragraph 1 of the Board's order directing respondents to "Cease and desist from in any manner restraining or coercing employees of Ohio Consolidated Telephone Company or any other employer in the exercise of the rights guaranteed in Section 7 of the Act" is too broad. We agree only as respects the use of the words "in any manner" which are, in our opinion, vague and subject to misinterpretation, and therefore we order that these words be stricken from said paragraph 1.

We direct that a decree should issue enforcing the Board's order against the respondents, after the aforementioned words "in any manner" are stricken from paragraph 1 thereof.

Accordingly, a decree in the usual form may be submitted.

ORDER DENYING REHEARING

(Filed June 26, 1959)

This cause having come on before the Court upon Respondents' Motion for Reconsideration and Rehearing, and the Court having examined said Motion and Memorandum, and being of the opinion that no new matter has been presented,

Said Motion for Reconsideration and Rehearing be and it is hereby denied.

APPENDIX G

DECISION AND ORDER OF NLRB

On April 11, 1957, Trial Examiner C. W. Whittemore issued his Intermediate Report in this case, finding that the Respondents had not engaged in the alleged unfair labor practices within the meaning of Section 8 (b) (1) (A) of the Act, and recommending that the complaint be dismissed in its entirety, as set forth in the copy of the Intermediate Report attached hereto. Thereafter, the Company and the General Counsel filed exceptions to the Intermediate Report and supporting briefs. The Respondents filed a brief in support of the Intermediate Report.

The Board has reviewed the rulings made by the Trial Examiner at the hearing and finds that no error which can plainly be termed prejudicial was committed. The rulings are hereby affirmed. The Board has considered the Intermediate Report, the exceptions and briefs, and the entire record in the case, and hereby adopts the relevant findings of fact made by the Trial Examiner, as indicated below, but not his conclusions or recommendations.

1. As found by the Trial Examiner, the record shows, and the Respondent labor organizations do not strenuously dispute, that during the course of an economic strike against the Company they engaged in many incidents of coercive conduct or misconduct designed to impede the Company's operations and intimidate the personnel engaging in such operations. On July 18, 1956, shortly after the strike began, agents of the Respondents followed district manager Matz home from work in superior numbers.[1] On July 19, agents of the Respondents prevented Matz and foreman Kerns from leaving a Company exchange until police were called to the rescue. In the afternoon of July 29, as two Company supervisors were about to enter the Sciotoville exchange with an out-of-town person apparently not known to the pickets, agents of the Respondents prevented the "outsider" from entering. In the evening of the same day, a repetition of the incident occurred when the Respondents' agents admittedly stated that they wanted

[1]Member Fanning would not rely on this incident as a violation of Section 8 (b) (1) (A).

no "strangers" to go in, but again the police were called to the rescue. On July 30 agents of the Respondents prevented Company personnel from entering the New Boston and Sciotoville exchanges with supplies. On about the same day the Respondents' agents also prevented employee Maynard from entering the Sciotoville exchange until escorted in by police. On August 13, as two "strangers" were accompanying Company supervisors repairing Company equipment on the Matthews' farm, agents of the Respondents warned the "strangers" to get out of town if they had any concern for their families. As the two "strangers" were dining at the Turkey Shop restaurant that evening, agents of the Respondents "asked" them if they were getting out of town that night; and a large group of local residents carried out the warning to leave town by overturning their car, an act for which the Respondents did not disclaim responsibility. On August 22 an agent of the Respondents threatened a Company repairman with violence for taking his photograph. While Company personnel were righting an overturned Company truck in Reverend Butterbaugh's yard on August 23, one of the Respondents' agents was overheard to remark that he was going to get blood and hair on a pick handle he was wielding. On August 24 a crowd of the Respondents' agents uttered insulting remarks and vile names at Company personnel repairing Company equipment at the Star Yard, and followed them back to town blowing their horns all the way. On September 18 Company personnel were engaged in some Company work on Woodland Avenue when one of a larger number of agents of the Respondents reached into a Company truck parked at the curb and opened the glove compartment. When one of this number was shoved back by a Company supervisor, the Respondents' agents engaged in violence and forced the Company personnel to leave.

2. The Trial Examiner found that some five of the foregoing incidents constituted coercive misconduct by the Respondents. He further found that the Respondents also engaged in various other incidents, including those summarized above. The Respondents did not except to these findings and we agree with the finding that the Respondents engaged in such incidents. Unlike the Trial Examiner, however, we find that in all the instances above set forth the Respondents vio-

lated Section 8 (b) (1) (A) of the Act.

The Trial Examiner concluded that the Respondents did not violate Section 8 (b) (1) (A), because the incidents did not tend to restrain or coerce *employees* in the exercise of their statutory rights. He reasoned that the incidents of coercive misconduct had no tendency to restrain employees because they were directed against victims who at one time or another had been supervisors. However, we find that the object of one instance of misconduct (Maynard) was in fact an employee and not a supervisor, and the other victims were performing work of rank and file employees as strike replacements regardless of their quondam status as supervisors either of the Company or of related corporations from other areas. Moreover, even if the Respondents' misconduct were directed entirely against personnel acting as supervisors, which was not the case here, the circumstances were such that the Company's striking and non-striking employees were aware of it, and thereby tended to be restrained and coerced in their own exercise of the right to continue or discontinue striking as they wished.[2]

The Trial Examiner further reasoned that the Respondents' misconduct, apparently even assuming that it restrained or coerced employees, was justified by the Company's own anti-union conduct, which disqualified it from filing charges against the Respondents and manifested a contemptuousness of its employees statutory rights. However, the Act provided the Respondents with ready redress, if they believed the Company had engaged in misconduct by filing an appropriate charge with the General Counsel for his independent determination as to whether to proceed with the issuance and prosecution of a complaint. This the Respondents did not do. In the circumstances of this case, we may not permit the Respondents to restrain or coerce employees in the exercise of their statutory

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[2]We do not agree with the Trial Examiner's attempt to distinguish the contrary authority of W. T. Smith Lumber Company, 116 NLRB 507, enf'd 243 F. 2d 745 (C. A. 5). The purported distinction was based in part on the irrelevant testimony of many employees, that they were not in fact restrained or coeced by the respondents' conduct. See also Brooklyn Spring Corporation, 113 NLRB 815, enf'd 243 F. 2l 539 (C. A. 2).

rights merely because the Company may also have engaged in misconduct.[3]

Accordingly, we find that the Respondents restrained and coerced employees within the meaning of Section 8 (b) (1) (A) of the Act.

3. The General Counsel and the Company assail the Trial Examiner as prejudiced because of adverse ruling and recommendations, and criticize him because of certain comments he made during the hearing and in his Intermediate Report. Although we have found that the record as it stands warrants the 8 (b) (1) (A) finding and cease and desist order sought, thus making it unnecessary to consider the attack, we have nevertheless given the matter consideration because of its importance in assuring the public of the fairness and impartiality of our hearings. Without going into detail, we wish it to be understood that we do not endorse those rulings and comments of the Trial Examiner which may give the appearance of partiality[4] by extending the case beyond the single issue presented by the General Counsel, to-wit, whether the Respondents had restrained or coerced employees in the exercise of their statutory rights. As evidence and findings that the Company may also have unlawfully interfered with these employee rights are irrelevant, we do not consider or adopt them.

ORDER

Upon the entire record in the case and pursuant to Section 10 (c) of the National Labor Relations Act as amended, the National Labor Relations Board hereby orders that the Respondents, Communications Workers of America, AFL-CIO, and its Local No. 4372, and their respective officers, representatives, agents, successors and assigns:

1. Cease and desist from in any any manner restraining or coercing employees of Ohio Consolidated Telephone Company

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[3]See Sunset Line and Twine Co., 79 NLRB 1487, fn. 6. We do not agree with the Trial Examiner's purported analogy to N. L. R. B. v. Indiana & Michigan Electric Company, 318 U. S. 9, decided before the Act was amended so as to confer equal protection on the employees' right to refrain from union activity.

[4]See Better Monkey Grip Co., 113 NLRB 938.

or any other employer in the exercise of the rights guaranteed in Section 7 of the Act.

2. Take the following affirmative action, which the Board finds will effectuate the policies of the Act:

(a) Post in conspicuous places in their business offices, meeting halls, and all other places where notices to their members are customarily posted, copies of the notice attached hereto marked "Appendix."[5] Copies of said notice, to be furnished by the Regional Director for the Ninth Region, after being duly signed by official representatives of the Respondents shall be posted by the Respondents immediately upon receipt thereof and maintained by them for sixty (60) consecutive days thereafter. Reasonable steps shall be taken by the Respondents to insure that said notices are not altered, defaced, or covered by any other material;

(b) Mail signed copies of the notice to the Regional Director for the Ninth Region for posting, Ohio Consolidated Telephone Company willing, at all locations where notices to the Company's employees are customarily posted. Copies of said notice, to be furnished by the Regional Director for the Ninth Region, after being duly signed by authorized representatives of the Respondents shall be forthwith returned to the Regional Director for such posting.

(c) Notify the Regional Director for the Ninth Region in writing, within ten (10) days from the date of this Order, what steps have been taken to comply herewith.

Dated Washington, D. C., May 1, 1958.

Boyd Leedom,	Chairman
Philip Ray Rodgers,	Member
Stephen S. Bean,	Member
Joseph Alton Jenkins,	Member
John H. Fanning,	Member

NATIONAL LABOR RELATIONS BOARD

((SEAL)

[5]In the event that this Order is enforced by a decree of a United States Court of Appeals, there shall be substituted for the words "PURSUANT TO A DECISION AND ORDER" the words "PURSUANT TO A DECREE OF THE UNITED STATES COURT OF APPEALS, ENFORCING AN ORDER."

APPENDIX

NOTICE TO ALL MEMBERS OF COMMUNICATIONS WORKERS OF AMERICA, AFL-CIO, AND ITS LOCAL 4372, AND TO ALL EMPLOYEES OF OHIO CONSOLIDATED TELEPHONE COMPANY

Pursuant to

A DECISION AND ORDER

of the National Labor Relations Board and in order to effectuate the policies of the National Labor Relations Act as amended, we hereby notify you that:

We Will Not in any manner restrain or coerce employees of Ohio Consolidated Telephone Company or any other employer in the exercise of the rights guaranteed in Section 7 of the Act.

Communications Workers of America, AFL-CIO
(Labor Organization)

Dated_____ By_____
(Representative) Title

Local 4372, Communications Workers of America, AFL-CIO
(Labor Organization)

Dated_____ By_____
(Representative) Title

This notice must remain posted for sixty days from the date hereof, and must not be altered, defaced, or covered by any other material.